

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X
4 UNITED STATES OF AMERICA : 08-CR-76
5 -against- : U.S. Courthouse
6 : Brooklyn, New York
7 CHARLES CARNEGLIA
8 a/k/a CHARLIE CANIG
9 Defendant :
10 : February 19, 2009
11 : 9:00 a.m.
12 - - - - - X

13 BEFORE:

14 HONORABLE JACK B. WEINSTEIN
15 United States District Judge
16 and a Jury

17 APPEARANCES:

18 For the Government: BENTON J. CAMPBELL, ESQUIRE
19 United States Attorney
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22 BY: ROGER ANSON BURLINGAME
23 EVAN NORRIS
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25 Assistant U.S. Attorneys

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22 and
23 CURTIS JORDAN FARBER
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23 Court Reporter: RONALD E. TOLKIN, RMR
24 Official Court Reporter
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1 THE COURT: Good morning, everyone. We have two
2 matters.

3 May I have those things, the two items.

4 LAW CLERK: Here Your Honor.

5 THE COURT: Court Exhibit 1, the government moved to
6 preclude the defense from questioning lay witness Maldonado
7 concerning his refusal to submit to a lie detector test. Why
8 does the defendant want this in?

9 MS. SHARKEY: Respectfully, Judge, it goes to the
10 witness' cooperation with the investigation. It goes to his
11 state of mind. There is no lie detector results that are at
12 issue. Which I have to say, these were filed late. We just
13 saw them this morning.

14 Nonetheless, the witness' refusal to cooperate with
15 the investigation into the death of his partner may well be
16 relevant. The defense should be allowed to inquire into that
17 area. I don't imagine -- this is Mr. Farber's cross, but I
18 don't imagine that it will be an extensive diversion. But it
19 certainly is relevant to the events that happened shortly
20 after the murder of his partner. And his refusal to cooperate
21 in the investigation is, in fact, relevant.

22 THE COURT: The government's motion is granted. The
23 refusal to take a lie detector is not relevant. There are
24 many reasons why a person might refuse to take a lie detector.
25 It has nothing to do with refusal to cooperate. A person has

1 the right not to incriminate himself. And a person has a
2 right not to take a lie detector when lie detectors are of
3 such questionable value.

4 MS. SHARKEY: Judge, one other thing, though, that
5 the record reveals that is not before the Court, is that there
6 was internal questions as to why the driver, who refused to
7 take -- or the partner who had refused to take the test had,
8 in fact, volunteered or requested to be partnered with this
9 individual when there was such a history of animosity between
10 the two. The question as to their presence together on the
11 date of the murder wasn't initiated by law enforcement. I
12 believe it was initiated by, in fact, the internal review of
13 the witness who testified.

14 THE COURT: That's very clear. My ruling is very
15 firm. I won't have it. Don't get into it.

16 The second point, Court Exhibit 2, letter of
17 February 18th of the government, with respect to facial hair.
18 What is the defense view?

19 MR. FARBER: Your Honor, with respect to the exhibit
20 that the government seeks to use, first of all, I don't
21 believe that they gave the entire statement. Looking over the
22 notes of Detective Kaplan, there was a further part of that
23 statement that goes through as follows -- if I may read it on
24 the record?

25 THE COURT: Of course.

1 MR. FARBER: "In route Detective Reilly asked
2 Carneglia, What's with the beard? Carneglia stated that he
3 was writ to the Nassau County Jail from another facility
4 because he needed dental work. While getting this implant
5 Carneglia's mouth became infected so he grew a beard to hide
6 the swelling. Carneglia stated fellow inmates were
7 questioning him about the beard and told him to shave it. He
8 continued to grow it because it pissed them off."

9 If the Court's going to allow the government to
10 bring in the statement for completeness, that is the entire
11 statement. All right.

12 THE COURT: All right. Then we'll put it all in.

13 MR. FARBER: But I would say to the Court that, in
14 any event, the statement should be precluded because it was a
15 pre Miranda statement. That the Court had indicated at the
16 hearing that the pre Miranda statement --

17 THE COURT: Now, you're raising another point. What
18 is the government's answer to my exclusion of pre Miranda
19 statements?

20 MR. NORRIS: Your Honor, we ask that in the event
21 the defense makes a beard argument that, obviously, at that
22 point it would be relevant. It wouldn't be duly prejudicial.
23 We'd ask that we be allowed to elicit that particular
24 statement.

25 THE COURT: Well, I think --

1 MR. NORRIS: The Court ruled that it would be able
2 to come in if they made that argument.

3 THE COURT: I think it raises too many problems of
4 what happened in prison and so on. The whole beard is so
5 absurd that it's not going to cut any ice with this jury.

6 MR. NORRIS: Your Honor, in the event -- the defense
7 hadn't indicated whether they're intending to put on any
8 evidence with respect to that issue. In the event that --

9 THE COURT: What kind of evidence?

10 MR. NORRIS: I don't know. But in the event they
11 seek to make further issue of the defendant's beard, we ask to
12 recall Detective Kaplan.

13 THE COURT: You can reopen the issue any time. But
14 for the moment, let's not have the beard.

15 MS. SHARKEY: Judge, there are other issues. One of
16 the witnesses that is slated to testify is a crime scene
17 investigator from the NYPD. In his 3500 material there are
18 photos of the deceased which the defense seeks to exclude.

19 THE COURT: May I see the photos?

20 MS. SHARKEY: And there's also additional photos
21 that were shown just this morning by counsel.

22 THE COURT: Well, let me see the photos and I'll
23 rule on them.

24 MR. BURLINGAME: Just to clarify, we're actually
25 calling -- we notified the defense of it today because we'll

1 be calling these witnesses on Monday; so we could know what to
2 prepare with the witnesses over the weekend. These are the
3 DiBono --

4 THE COURT: Well, clearly, 40-C comes in. It shows
5 a man folded up in a way demonstrated already by the witness.
6 That's 40-C.

7 40-D. I don't know why we need 40-D.

8 MR. BURLINGAME: Can I see?

9 THE COURT: It's a horrible picture.

10 MR. BURLINGAME: Well, what this does is, this
11 corroborates that the witness testified that the -- when he
12 watched the attack, the defendant was -- what he had thought
13 at the time was hitting DiBono in a downward fashion, what
14 obviously it turned out to be was shooting him like this.
15 This will corroborate the medical examiner's testimony that
16 the entry wounds --

17 THE COURT: Why not have the medical examiner?

18 MR. BURLINGAME: They're going to come in, these
19 will come in in connection -- I mean they'll corroborate and
20 be relevant to the medical examiner's testimony.

21 THE COURT: The medical examiner's enough. I don't
22 want 40-D. It's just too horrible.

23 Now, 130-A. What is it?

24 MR. BURLINGAME: These are showing the different
25 bullet entry wounds --

1 THE COURT: Multiple shots?

2 MR. BURLINGAME: -- to Delgado-Rivera. Multiple
3 shots.

4 THE COURT: That can come in.

5 45-A is, again, another horrible picture that the
6 diagrams of the coroner will show.

7 MS. SEIFAN: Your Honor, the medical examiner, this
8 is going to aid the medical examiner in describing different
9 wounds. For example, here, this is skin slippage. It
10 indicates how long the body was in the car, which is important
11 because the body was not found on the day that he was killed.
12 This shows the bullet wounds that went to the head.

13 If you want --

14 THE COURT: Excuse me, let me look at it for a
15 second.

16 MS. SHARKEY: Judge --

17 THE COURT: Excuse me.

18 MS. SHARKEY: I'm sorry.

19 THE COURT: All right. I'll allow everything except
20 the frontal --

21 MS. SEIFAN: The face.

22 THE COURT: -- which is to the right on the lower.

23 MR. BURLINGAME: I think you have it upside down.

24 THE COURT: I had it upside down. On the left on
25 the upper level.

1 MR. BURLINGAME: All but the face?

2 THE COURT: The others come in.

3 MS. SHARKEY: May I see it?

4 THE COURT: Yes.

5 MS. SHARKEY: Respectfully, I would request that the
6 Court preclude both photos of the head. Certainly, the
7 defense isn't contesting the death.

8 THE COURT: No.

9 MS. SHARKEY: It's not contesting the cause of
10 death. Those photos are, frankly, the prejudice far out
11 weighs any probative value. The medical examiner not only has
12 a contemporaneous report of the autopsy, but also sketches
13 that were done of the bullet wound entry. The reasons
14 provided by the government that it's important to show the
15 path are clearly depicted in the medical examiner's report.

16 All this does is inflame the passion of the jury.
17 There's no need for -- in fact, there's no need for the
18 medical examiner to use those photos in front of the jury.
19 They can say they have reviewed photos, but the Court knows
20 there's a tape recording that's done at the time an autopsy
21 happens. There are charts. There are sketches. All of that
22 is contained in the crime scene and the autopsy report. Those
23 photos are revolting. Those photos have no probative value,
24 except to inflame the passions of the jury.

25 THE COURT: I don't agree. I think they are highly

1 probative. There's a certain bloodlessness, cold
2 bloodlessness in sketches. The government is entitled to show
3 that this was a human being and the nature of the wounds,
4 showing multiple shots as described. It appears to be a
5 cold-blooded killer who is experienced in killing.

6 MR. FARBER: Judge, I would actually say that my
7 problem with one of the photos is the one on the far
8 right-hand side, on the top, where there's something
9 artificial inserted through several of the wounds.

10 THE COURT: No. That shows the path of the wound.
11 The path of the wound is okay --

12 MR. BURLINGAME: Judge, may we return one second to
13 40-D? If we were to eliminate the face shots so that it was
14 in keeping with that exhibit where we just show the wound
15 entries, because I think the value of this is it shows it was
16 taken right in the parking lot. So if we eliminated the
17 picture on the left-hand side it would, I think, conform with
18 Your Honor's ruling.

19 MS. SHARKEY: The value of it being taken inside the
20 parking lot does nothing to the argument as to the wound path.

21 THE COURT: This was taken where?

22 MR. BURLINGAME: Immediately outside the car.

23 THE COURT: Where's the car? I don't see it.

24 MR. BURLINGAME: It's just to the side. It'll be,
25 when you put in the other crime scene photos of the car, it'll

1 be clearer.

2 THE COURT: He seems to be lifted up. He --

3 MS. SHARKEY: He's not --

4 THE COURT: Excuse me.

5 MS. SHARKEY: I'm sorry. Forgive me.

6 THE COURT: He seems to be sitting up in part. Was
7 he lifted after he died?

8 MR. BURLINGAME: He was taken out of the car at this
9 point, yes. And they took his clothes off.

10 THE COURT: Those wounds are already shown on these
11 other pictures. So 40-D is out.

12 Now we have the -- this other photograph without a
13 number on it.

14 MR. BURLINGAME: This is the back of the armored car
15 driver at the JFK Airport. Again, it depicts the --

16 THE COURT: Put numbers on it so I can rule on it.

17 MS. SHARKEY: Judge, as Mr. Burlingame is doing
18 that, I just want the record to reflect that on the exhibit
19 that the Court previously ruled on --

20 I don't have copies of these.

21 -- 130-A, the multiple wounds on Mr. Delgado-Rivera.
22 Again, that information will be testified to. It's in the
23 graph of the crime scene and also in the autopsy report. The
24 multiple wounds in the back, that's not given to show
25 trajectory or the direction of the bullet.

1 THE COURT: Now, is the coroner going to indicate
2 the closeness of the shot by reference to grains and powder
3 and the like? Because I see one of these wounds has what
4 appears to be powder burns.

5 MS. SEIFAN: I believe so, Your Honor. Also, he's
6 going to indicate this is a shotgun wound and this was a wad
7 that got stuck in the body.

8 THE COURT: That's clearly admissible.

9 MR. BURLINGAME: This is 130-B and 130-C, which are
10 also pictures of the armored car driver.

11 THE COURT: This was a shotgun?

12 MR. BURLINGAME: The shotgun and the pistol shots.
13 The defendant had the pistol and his accomplice had the
14 shotgun.

15 THE COURT: Okay. So 130-B, I think comes in,
16 again, to show the difference in the wounds and the two types
17 of guns. It appears to be some powder here.

18 MR. FARBER: If I could, I believe that photograph
19 is the same photograph as 130-A, which the Court already
20 permitted in. It's just a more gruesome photo.

21 THE COURT: No, it isn't. It's a blowup that shows
22 the entire body. Whereas 130-A just shows the portion of the
23 skin. So that 130-B is needed in order to show the position
24 of the wound.

25 MS. SHARKEY: But 130-B also, respectfully, Judge,

1 has rivulets, countless rivulets of blood running down the
2 deceased's back. It has no evidentiary value.

3 THE COURT: It doesn't mean a thing. We know by now
4 that these are not bloodless crimes.

5 Now we have 130-C. What is this?

6 MR. BURLINGAME: That is Delgado-Rivera after he was
7 dead.

8 MS. SEIFAN: It indicates a bruise at the top of his
9 right eye.

10 MR. BURLINGAME: It corroborates the witness'
11 testimony.

12 THE COURT: Well, what does all this --

13 MR. BURLINGAME: That was the equipment that was
14 used to try to keep him alive on the way to the hospital.

15 THE COURT: Oh, I see.

16 MR. BURLINGAME: You remember that the witness
17 testified that he was pistol whipped, this corroborates that.

18 THE COURT: 130-C comes in, too.

19 MR. FARBER: Judge, can we ask that that one be
20 slightly modified to just show the forehead and not the mouth
21 and the breathalyzer that what was placed in his mouth? I
22 have no objection to showing there was a bruise on the
23 forehead.

24 THE COURT: I was thinking of that myself. It's
25 easy enough to do that. Just put a sticker over it this way.

1 MR. BURLINGAME: We'll figure a way to eliminate the
2 breathing apparatus.

3 THE COURT: Put a sticky on it.

4 MR. BURLINGAME: Thank you.

5 THE COURT: That's the ruling on all the pictures
6 now. What else do we have?

7 MS. SEIFAN: We have a -- we're going to play a Port
8 Authority tape of the call that came in regarding the incident
9 at JFK. We created a transcript of the call. The parties
10 have agree this is a fair and accurate transcript. We're just
11 going to give it to the jury as an aid. It will not be
12 offered.

13 THE COURT: Okay. Bring in the jury, please.

14 This is Court Exhibit 3 of today's date. The
15 Government's updated exhibit list.

16 (So marked as Court Exhibits 1, 2 & 3 in evidence.)

17 MR. NORRIS: Shall we get the witness, Your Honor?

18 THE COURT: Yes, please.

19 (Whereupon the jury enters the courtroom at 9:32
20 a.m.)

21 THE COURT: Be seated, please.

22 Good morning, everybody.

23 THE JURORS: Good morning.

24 THE COURT: Swear the witness, please.

25 LAW CLERK: Please raise your right hand.

1 (Witness sworn.)

2 THE WITNESS: Yes, I do.

3 E D W I N M A L D O N A D O,

4 called as a witness, having been first

5 duly sworn, was examined and testified

6 as follows:

7 LAW CLERK: Please be seated, and state and spell
8 your full name.

9 THE WITNESS: Edwin Maldonado. E-D-W-I-N. Last
10 name M-A-L-D-O-N-A-D-O.

11 THE COURT: Thank you.

12 Proceed.

13 DIRECT EXAMINATION

14 BY MS. SEIFAN:

15 Q Mr. Maldonado, good morning.

16 A Good morning.

17 Q Can you push the microphone closer to your face. Please
18 speak slowly and clearly so we can hear you. Put it right up
19 there. Okay?

20 A Yes.

21 Q Good morning.

22 A Good morning.

23 Q How old are you, Mr. Maldonado?

24 A Fifty-one.

25 Q Are you married?

1 A Yes, I am.

2 Q Do you have any children?

3 A Yes, ma'am.

4 Q How many children do you have?

5 A Five.

6 Q What do you do for a living?

7 A I'm a local resident network distributor for United
8 Parcel Service.

9 Q How long have you been working for United Parcel Service?

10 A Ten years.

11 Q Can you briefly tell the jury what other jobs you had
12 before working at the United Parcel Service?

13 A I worked for Coin Device Corporation, Best International
14 and embroidery factories.

15 Q What kind of companies are Coin Device International and
16 Best International?

17 A They are armored car companies.

18 Q What did you do prior to working at those companies?

19 A I was in the military.

20 Q How long were you in the military?

21 A Eight years.

22 Q What branch of the military were you in?

23 A United States Army.

24 Q When you left the Army, what was your rank?

25 A Sergeant.

1 Q You had an honorable discharge?

2 A Yes, Ma'am.

3 Q You said that you worked for Best International. Do you
4 recall how long you worked for Best International?

5 A Approximately two years.

6 Q Do you remember the years that you worked at Best
7 International?

8 A '89, '90.

9 Q What did you do there?

10 A I was a driver slash custodian.

11 Q What does it mean to be a custodian?

12 A The custodian is the person who sits on the passenger
13 side. That he gets the signature for all the deliveries that
14 you give, check cashiers, any stops on the route.

15 Q So you were a driver and you were a custodian?

16 A Yes.

17 Q Is there another name for a custodian?

18 A Messenger.

19 Q Did you have a partner when you made your deliveries?

20 A Yes, ma'am.

21 Q Did you always have the same partner?

22 A No, ma'am.

23 Q Can you walk the jury through a typical delivery of
24 valuables?

25 A When you approach the stop that you was going to deliver,

1 the driver would get out and he would walk in front of the
2 truck. And in the vicinity of the stop, he would look to make
3 sure that everything's okay, everything's safe. He will
4 signal the messenger out. Which, he would then take the
5 currency, if you're making a check cash stop, walk it into the
6 stop. And he would follow you behind you.

7 Q So the driver stays with the messenger when they go to
8 deliver the valuables inside?

9 A Yes, ma'am.

10 Q So the truck is left unattended when you go into the
11 building?

12 A Yes, ma'am.

13 Q Is the truck locked or open when you go in to deliver the
14 valuables?

15 A Locked.

16 Q Did you wear a uniform when you made your deliveries?

17 A Yes, ma'am.

18 Q Do you recall what it looks like?

19 A Navy blue pants and a red polo shirt.

20 Q Did you also have a hat?

21 A On and off we would wear hats, yes.

22 Q Did you carry a gun?

23 A Yes, we did.

24 Q What kind of gun did you carry?

25 A A 38 Smith & Wesson.

1 Q Mr. Maldonado, were you ever robbed while working as an
2 armored car driver?

3 A Yes.

4 Q How many times?

5 A Once.

6 Q Where did that robbery take place?

7 A At John F. Kennedy International Airport.

8 Q Was that the only time in your life you were ever robbed?

9 A Yes, ma'am.

10 Q Do you recall when that robbery took place?

11 A Well, 1990.

12 Q What time did your shift start on the day that you were
13 robbed?

14 A 4:00 a.m.

15 Q Where did you report to in the beginning of your shift?

16 A Reported to the Brooklyn depot in the southside of
17 Brooklyn.

18 Q Did you have a partner assigned to you that day?

19 A Yes, ma'am.

20 Q What was your partner's name?

21 A Jose Delgado-Rivera.

22 Q Had you worked with Mr. Rivera before?

23 A Yes.

24 Q What happened when you got to work on the morning of the
25 robbery?

1 A We started to move it through, the currency and gold bars
2 and silver bars we were supposed to deliver, and payroll, out
3 of the bulk.

4 Q What did you do next?

5 A We loaded up the truck. And after we loaded it, we left.

6 Q Who was assigned to drive the armored car on the day of
7 the robbery?

8 A I was.

9 Q Did you end up driving?

10 A No, ma'am. I didn't.

11 Q Why not?

12 A I was way too tired.

13 Q I'm showing you what's already in evidence as Government
14 Exhibit 64. Do you recognize this person?

15 A Yes, ma'am.

16 Q Who do you recognize it to be?

17 A That's Jose Delgado-Rivera.

18 THE COURT: What number is that?

19 MS. SEIFAN: 64, Your Honor.

20 Q Where did you go after you left the Brooklyn depot?

21 A We went to JFK.

22 Q Where in particular were you going in JFK?

23 A American Airlines terminal.

24 Q What were you delivering at the American Airlines
25 terminal?

1 A Payroll.

2 Q Do you recall the stops that you were going to make after
3 you delivered the valuables to JFK?

4 A Yes. We were supposed to go after JFK, La Guardia and
5 then Attleborough, Massachusetts.

6 Q So you were going upstate after you left the airport?

7 A Yes, ma'am.

8 Q How were the payroll monies kept in the truck?

9 A In canvas bags.

10 Q How many bags of payroll money were in the truck on the
11 day of the robbery?

12 A Two.

13 Q When you loaded the truck, where did you put the payroll
14 monies?

15 A Supposed to be kept in the back.

16 Q Where did you put them?

17 A I put them at the messenger side by my feet in the front
18 cab.

19 Q What time did you arrive at JFK on that morning?

20 A Approximately 5:00 a.m.

21 Q Tell the jury what happened when you arrived at JFK?

22 A When we arrived Jose woke me up because I had fallen
23 asleep on the ride from Brooklyn to the airport. And he got
24 out from the driver's side, walked around the truck, and
25 walked about the vicinity towards the entrance. Somewhere in

1 the vicinity, he signaled me that -- to come out, that
2 everything was clear. And I opened the door and came out.

3 When I hit the ground, with my feet, I had my back
4 turned towards the entrance of the terminal. And in the
5 background I heard a voice, "Don't move." As I was going to
6 draw my weapon, from the corner of my eye I see a person with
7 a handgun coming towards Jose. They started struggling.

8 There was a shotgun blast from the back of the
9 truck, which blew my head and hit the glass of the passenger
10 side. I covered my face. I hit the ground and crawled to the
11 front of the truck underneath the bumper.

12 Q When you heard a voice, the voice saying don't move --

13 THE COURT: Excuse me. I missed some of that.
14 Would you read the answer back, please.

15 (Whereupon the record was read by the reporter.)

16 THE COURT: I thought he used the word "head" before
17 the shotgun blast. Did you use the word "head" at all?

18 THE WITNESS: I had a hat that day. Yes, sir.

19 THE COURT REPORTER: Hat?

20 THE WITNESS: Hat.

21 BY MS. SEIFAN:

22 Q What happened to your hat after the shotgun blast?

23 A The blast, it blew off. That's when I felt the particles
24 in my face, of the glass, and I hit the ground and crawled to
25 the front of the truck.

1 THE COURT: The shot came from behind you?

2 THE WITNESS: From that vicinity, yes.

3 MS. SEIFAN: Your Honor --

4 THE COURT: Excuse me. I want to just -- I missed
5 part of that answer. I'm not sure the reporter got every
6 word.

7 The shot came from behind you?

8 THE WITNESS: Somewhere behind.

9 THE COURT: Passed over your head?

10 THE WITNESS: Yes, sir.

11 THE COURT: Took off your hat?

12 THE WITNESS: Yes, sir.

13 THE COURT: And then you dove?

14 THE WITNESS: Then I hit the ground.

15 THE COURT: When it passed over you the glass was
16 shattered?

17 THE WITNESS: Yes.

18 THE COURT: And some of the shattered pieces came
19 back into your face?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. Continue.

22 MS. SEIFAN: Your Honor, can I have permission for
23 the witness to step off the podium? I think we can explain
24 better, he can demonstrate it better, more properly.

25 THE COURT: He can do that. Is he going to use the

1 diagram?

2 MS. SEIFAN: No. I think he can just explain it.

3 Let's use the jury box as a truck, okay. This is
4 the jury box --

5 THE COURT: Put up the diagram, please.

6 MS. SEIFAN: So can he just demonstrate and then --

7 THE COURT: Yes.

8 CONTINUED DIRECT EXAMINATION

9 BY MS. SEIFAN:

10 Q All right. This is the -- the jury box is going to be
11 the truck. Okay?

12 A Okay.

13 Q This will be the passenger side of the truck where you
14 got out. Okay?

15 THE COURT: Facing which way?

16 MS. SEIFAN: If the truck is facing this
17 (indicating) way.

18 THE COURT: Facing which way?

19 MS. SEIFAN: The front of the courtroom.

20 THE COURT: Facing to the left, sitting in the jury
21 box. Okay.

22 BY MS. SEIFAN:

23 Q Can you please demonstrate to the jury --

24 THE COURT: And what is this? Is this the outside
25 of the truck when he gets out?

1 MS. SEIFAN: Yes. Right by Juror number -- between
2 Juror numbers one and two is the door of the truck.

3 THE WITNESS: Okay. As I jumped -- as I got out
4 here, that I got my feet on the ground, out of the corner of
5 my eye, when I heard the voice.

6 THE COURT: Which way were you facing?

7 THE WITNESS: I was facing this (indicating) way
8 when I got out.

9 THE COURT: Were you facing the door?

10 THE WITNESS: No. My back was turned to the door.

11 BY MS. SEIFAN:

12 Q No. What door? You were facing?

13 A The passenger door.

14 Q The passenger door of the truck?

15 A Of the truck.

16 Q And the back was to the American Airlines terminal?

17 A Yes.

18 THE COURT: You were facing the door?

19 THE WITNESS: Yes.

20 THE COURT: All right.

21 THE WITNESS: As I stepped to the ground I heard the
22 voice that says, "Don't move." As I was going to --

23 THE COURT: From which direction, you're holding
24 your hand over your right shoulder?

25 THE WITNESS: When I got out I had my gun on this

1 side, and I'm holding -- I had it on the holster, my hand on
2 the holster.

3 THE COURT: You had your gun. You were holding it
4 on the right side?

5 THE WITNESS: Yes.

6 BY MS. SEIFAN:

7 Q And where did the voice come from that said don't move?

8 A It was somewhere from the back (indicating).

9 Q Okay.

10 THE COURT: Holding up his left-hand and pointing
11 directly behind him.

12 THE WITNESS: Right.

13 So as I turn, I saw somebody running this way
14 (indicating) with a handgun towards Jose.

15 THE COURT: From behind the truck?

16 THE WITNESS: Yes. From my left -- from my left
17 towards the back.

18 THE COURT: All right. Continue answering
19 questions.

20 BY MS. SEIFAN:

21 Q Where was Jose Delgado-Rivera in relation to where you
22 are?

23 A This is the front of the truck, he was like towards the
24 right here (indicating). Somewhere in that vicinity there, on
25 the right.

1 THE COURT: You're pointing about five feet or --

2 THE WITNESS: Five or ten feet, roughly.

3 THE COURT: Ten feet north of where the motor would
4 be?

5 THE WITNESS: Yes, sir.

6 BY MS. SEIFAN:

7 Q What did you do -- so what happened next?

8 A I see some guy and Jose struggling. And as I was going
9 to draw my weapon, a shotgun blast from the back of the truck
10 hit the glass of the passenger side, which blew my hat off.
11 Particles hit my face. I hit the ground and I crawled to the
12 front of the truck right underneath the bumper.

13 THE COURT: Under the motor?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 BY MS. SEIFAN:

17 Q Mr. Maldonado, just so we're clear, the door of the truck
18 was open?

19 A It was open, yes, ma'am.

20 Q Okay.

21 A It was left open.

22 Q Okay.

23 THE COURT: Oh, I see. The door was open and you
24 were partly shielded by the door, from the front?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay.

2 BY MS. SEIFAN:

3 Q You were standing in-between the door and the truck?

4 A Yes. The door was open. And if it's the gentleman here,
5 the door's open that way. So I'm -- the door is left open
6 that way.

7 (Indicating.)

8 Q So the shotgun blast came from the direction of the back?

9 A Somewhere from the back and it hit the glass. There's a
10 big glass, a bulletproof glass, and it shattered. And that's
11 when I hit the ground and crawled to the front of the truck.

12 Q So do you know how close the shotgun blast was to you?

13 A Ten feet, probably.

14 Q Close enough to blow your hat off?

15 A Close enough with the blast to take the cap off my head.

16 Q Okay.

17 MS. SEIFAN: All right. You can have a seat.

18 (Whereupon the witness retakes the stand.)

19 THE COURT: Have the diagram brought up, if it's
20 available. Although I think the evidence is clear enough,
21 from my understanding. It's clear enough for me. If you want
22 to use the diagram, you can. It's up to you.

23 MS. SEIFAN: I think it's clear enough, Your Honor.

24 THE COURT: Okay. It's available.

25 BY MS. SEIFAN:

1 Q Just to clarify, Mr. Maldonado. When Mr. Delgado-Rivera
2 got out of the truck, which way did he walk?

3 A He got out from the driver's side. He walked in front of
4 the truck.

5 Q He walked in front of the truck?

6 A He walked in front of the truck, across the motor to the
7 front.

8 Q You said that there was a man that came running and was
9 struggling with Mr. Delgado-Rivera?

10 A Yes, ma'am. What I could see from the corner of my eye,
11 yes.

12 Q Do you recall what that man was wearing?

13 A Double A patch on the back of his jacket.

14 Q What do you mean by a double A patch?

15 A Double A is American Airlines insignia.

16 Q You remember seeing a double A insignia?

17 A Yes.

18 Q How did you feel after you crawled under the truck?

19 A Scared.

20 Q You testified that you have five kids?

21 A Yes, I do.

22 Q Did you have children at that time?

23 MS. SHARKEY: Objection to all of this.

24 THE COURT: Sustained.

25 BY MS. SEIFAN:

1 Q You said it was a shotgun. How do you know it was a
2 shotgun?

3 A Because I know what a shotgun sounds like.

4 Q How do you know?

5 A Because I have fired them in the military.

6 Q Approximately, how long were you underneath the front
7 bumper of the truck?

8 A A minute, tops.

9 Q Were you thinking clearly at that moment?

10 A I was thinking -- my whole life was flashing in front of
11 my face.

12 Q Did you do anything to stop the robbery, Mr. Maldonado?

13 A I couldn't.

14 Q Why not?

15 A I panicked.

16 Q What did you see while you were underneath the truck?

17 A I saw two set of feets, black sneakers coming toward
18 where the door was open on the messenger side.

19 Q When you say messenger side, you mean the passenger side?

20 A Passenger side with the second -- the passenger sits in.

21 Q What did you think when you saw the two set of feet
22 coming towards you?

23 MS. SHARKEY: Objection.

24 THE COURT: I'll allow it.

25 A I thought I was going to die.

1 BY MS. SEIFAN:

2 Q What happened next?

3 A I held there for a few seconds. The feets, they went
4 towards the back of the truck. I got up with my handgun on my
5 hand and ran over -- saw Delgado on the ground, ran over to
6 him. Started shaking him, calling out his name. No response.
7 He was on -- turned his face to the side because he was on his
8 stomach and his face was -- the top of his face was touching
9 the ground.

10 Q Did you - -I'm sorry. Continue.

11 A I'm sorry?

12 Q Did you want to say something else?

13 A I turned his face, ran over to the truck and called for
14 help.

15 Q You said that you saw the two sets of feet run to the
16 back of the truck?

17 A Yes, ma'am.

18 Q Did you see anything else?

19 A When I was shaking Jose, like a car -- like a car sped
20 off from behind the truck.

21 Q So when you say -- the car came from behind the truck?

22 A Yes, ma'am.

23 Q You called for help. Did any help arrive?

24 A Yes, ma'am.

25 Q How soon after you called for help did the police arrive?

1 A Two minutes.

2 Q Do you recall how many bags the robbers stole?

3 A Two bags.

4 Q Do you recall how much money the robbers stole?

5 A Approximately 120,000.

6 Q Did you go back to work at Best International after Jose
7 Delgado-Rivera was killed.

8 A No, ma'am.

9 Q Why not?

10 A Because I couldn't -- I couldn't see myself risking my
11 life for somebody else's money.

12 Q How did you feel about what happened at JFK?

13 MS. SHARKEY: Objection.

14 THE COURT: Sustained.

15 MS. SEIFAN: No further questions, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. FARBER:

18 Q Good morning, sir.

19 A Good morning.

20 Q The morning in question, that was not your first time
21 you had made a delivery to the JFK American Airlines terminal?

22 A No. I had done it once before.

23 Q That had been part of a regular route?

24 A No, it's not a regular route.

25 Q But you had been there before?

1 A Once before.

2 Q On the day that you arrived, this was around 5:00 in the
3 morning?

4 A I arrived at the depot at 4:00.

5 Q No. I meant, sorry, when you arrived at the terminal?

6 A Approximately.

7 Q I'm just having trouble hearing you, if you could talk a
8 little louder. Thank you.

9 When you arrived, there was a bus that had just
10 pulled up, an employee bus? Do you recall?

11 A Don't recall.

12 Q Do you recall seeing other people coming into work at
13 that hour?

14 A No.

15 Q You don't recall seeing any other people?

16 A No, I don't.

17 Q You pulled up right in front of the building?

18 A Yes. We pulled -- yes. Almost in front of the building,
19 the doors just a little bit -- like a few yards behind the
20 passenger door somewhere.

21 MR. FARBER: Sir, I'm going to ask you to take a
22 look at what's been marked -- or I'm going to be marking now
23 as Defense Exhibit I, for identification.

24 THE COURT: Thank you.

25 MR. FARBER: You're welcome.

1 Q Sir, do you recognize what's depicted in what's been
2 marked for identification as Defense Exhibit I?

3 A The truck.

4 Q It's two pages, if you could just look at the second one
5 as well.

6 A (Witness complies.)

7 Q Are those pictures of your truck that you were driving on
8 -- on that date in December when the robbery took place?

9 A Yes.

10 Q Do those pictures fairly and accurately represent the way
11 that the truck looked and where it was parked at the time the
12 robbery took place?

13 A Yes.

14 MR. FARBER: Your Honor, I'd offer this exhibit into
15 evidence at this point.

16 THE COURT: Admitted.

17 (So marked as Defendant's Exhibit I in evidence.)

18 BY MR. FARBER:

19 Q Now, you indicated that you got out of the truck and just
20 as you had your two feet on the ground, you heard someone say
21 don't move?

22 A Yes.

23 Q Out of the corner of your eye you glimpse somebody, and
24 there was a shotgun shot?

25 A Yes.

1 Q Your hat went flying off?

2 A Yes.

3 Q I just want to make sure, your hat did not say American
4 Airlines on it?

5 A No.

6 Q What did your hat say, if anything?

7 A I don't remember what it said.

8 Q It didn't have an American Airlines logo?

9 A No. It was a baseball cap.

10 Q A baseball cap. A regular baseball cap?

11 A Yes.

12 Q You hid toward the front bumper?

13 A Yes.

14 Q Is it fair to state, to your immediate left from where
15 you were hiding was the grassy area where Mr. Delgado-Rivera
16 fell?

17 THE COURT: To his left? Bring in that diagram. I
18 do think it would be helpful.

19 MR. BURLINGAME: Judge, we don't have a blank copy
20 of it. There's other witnesses writing all over it.

21 THE COURT: That's all right.

22 (Whereupon the paralegal leaves the courtroom to
23 retrieve the diagram.)

24 BY MR. FARBER:

25 Q Sir, you are going to need to step down for a second.

1 A (Witness complies.)

2 Q I'll give you my pen, and if you could just mark with
3 your initials where you say you were crouched down by the
4 front bumper when you heard the shotgun shot?

5 THE COURT: Crouched down. Excuse me, don't do
6 anything.

7 MS. SHARKEY: The jury can't see.

8 THE COURT: Repeat that question. Withdraw the
9 question and start again.

10 MS. SHARKEY: Mr. Farber, the jury can't see.

11 THE COURT: Where is the pointer?

12 MR. BURLINGAME: Can we use a different colored pen,
13 too, so it's clear which witness.

14 MR. FARBER: That's a blue pen and this is black ink
15 on the board. It is a different colored pen.

16 Q This box, which apparently has the initials -- appears to
17 say FAC on it?

18 MR. BURLINGAME: That's an arrow.

19 MS. SHARKEY: It's an arrow.

20 MR. FARER: Oh, it's an arrow. I'm sorry.

21 Q FAC, is this a fair and accurate representation of where
22 the truck was parked, the armored car?

23 A Yes.

24 Q Was it facing from the front end on the left side
25 left-hand side of the diagram?

1 A Yes.

2 Q Okay. Would it be fair to say this is the front bumper
3 of the truck?

4 A Yes.

5 Q Okay.

6 THE COURT: Keep your voice up.

7 BY MR. FARBER:

8 Q Using the blue pen, put your initials where you were
9 crouched down by the bumper?

10 MS. SEIFAN: Objection, Your Honor.

11 THE COURT: Crouched down by the bumper?

12 MR. BURLINGAME: He testified that he was under the
13 bumper.

14 THE COURT: Oh, he was under the bumper.

15 MR. FARBER: Under the bumper.

16 THE COURT: He was underneath the car and his head
17 was in the vicinity of the bumper, is that right?

18 THE WITNESS: Yes.

19 BY MR. FARBER:

20 Q Okay. Can you just show us where that was?

21 A This is the bumper right here (indicating). So it's like
22 an inch this way over here (indicating).

23 Q Okay. If you could just put your initials?

24 A (Witness complies.)

25 Q Thank you.

1 MS. SEIFAN: Finished with that?

2 MR. FARBER: Yes.

3 THE COURT: Anything else you want him to identify,
4 in terms of position?

5 MR. FARBER: No.

6 THE COURT: All right. You can return to the
7 witness stand, please.

8 (Whereupon the witness retakes the stand.)

9 THE COURT: You were referring to a grassy area. Do
10 you want to continue that line?

11 MR. FARBER: No, Your Honor. I'm fine.

12 THE COURT: You're fine, okay.

13 BY MR. FARBER:

14 Q You testified on direct examination you saw two sets of
15 feet while you were in that crouched position or hiding
16 underneath the truck?

17 A Correct.

18 Q Then you saw those two set of feet go to the back of the
19 truck at some point in time?

20 A That's correct.

21 Q Then you saw a car drive away?

22 A As I ran towards Delgado that I was shaking him, I saw
23 like a light blue car sped off from the back.

24 Q You saw a light blue car drive away?

25 A Light blue car, yes.

1 Q Is it fair to state that you said you saw both
2 individuals who were the robbers wearing American Airlines
3 jackets?

4 A No. What I said was that I saw the individual who ran
5 towards Jose with an American Airlines patch on the back of
6 the jacket.

7 Q Did you see whether or not the other individual had that
8 outfit?

9 A No.

10 Q You were interviewed by the police immediately after the
11 incident, correct?

12 A Yes.

13 Q Do you recall being asked what the assailants, the
14 robbers looked like?

15 A I don't recall.

16 Q Do you recall describing one of the robbers as a short
17 guy, about 200 pounds?

18 A I'm sorry, I don't.

19 Q Does that description at all jive with your memory at
20 this point in time?

21 A No, it doesn't.

22 THE COURT: Speak up, sir.

23 A No, sir.

24 BY MR. FARBER:

25 Q What about the other guy being six feet tall. Do you

1 recall that?

2 A No.

3 Q I'm going to show you what I will mark as Defense Exhibit
4 J for Identification.

5 MR. FARBER: This is 3500 EM-4.

6 Q If you can just look at both pages, but mainly page two
7 where the report continues.

8 A Okay.

9 Q Have you read it?

10 A Yes.

11 Q Does it refresh your recollection now as to the fact that
12 one of the suspects was described as a 30-year-old male, five
13 six, 200 pounds?

14 A No, it doesn't.

15 Q You don't recall?

16 A No, sir.

17 Q Does it refresh your recollection that the second suspect
18 was described as six feet tall?

19 A No, sir.

20 Q Does it refresh your recollection that you described both
21 individuals as wearing American Airlines jackets?

22 A No. What I said was that I only saw one person. That
23 person that I saw with the corner of my eye with the double A
24 patch, which is the American Airlines insignia.

25 Q So you were interviewed on the day of the robbery,

1 correct?

2 A Yes, I was.

3 Q Is it fair to state that your memory was clearer and more
4 fresh on the day of the robbery than it is now 20 years later?

5 A I still remember some stuff. You're always going to
6 remember it.

7 Q It was a traumatic event?

8 A Yes, it was.

9 Q But it's now the year 2009?

10 A Correct.

11 Q The incident happened in the year 1990?

12 A Yes.

13 Q So 19 years ago?

14 A That's correct.

15 MR. FARBER: Your Honor, I would offer this document
16 into evidence.

17 MS. SEIFAN: Objection, Your Honor. Also, Your
18 Honor, just to be clear, the first part -- the first page has
19 been redacted because it is another's witness statement.

20 THE COURT: This is another witness.

21 MR. FARBER: Your Honor, the first page is redacted
22 because it was another eyewitness. The government redacted
23 it.

24 MR. BURLINGAME: The witness has stated it's an
25 inaccurate statement.

1 THE COURT: What is this redaction?

2 MR. BURLINGAME: Another witness was interviewed on
3 the same occasion.

4 THE COURT: This is the other witness' statement?

5 MR. FARBER: What I gave you, Judge, is the witness
6 statement that is testifying now. The first page -- the
7 officers wrote two different witness statements on one report.

8 MR. BURLINGAME: It's not even clear this is
9 Mr. Maldonado's statement.

10 THE COURT: That's what puzzles me.

11 MR. FARBER: Judge, I do have the unredacted
12 version.

13 MR. BURLINGAME: There's no evidentiary basis for
14 this to come in.

15 THE COURT: Let me see the unredacted statement, if
16 you have it.

17 MR. FARBER: I do, Judge.

18 MR. BURLINGAME: The witness has testified that this
19 is not his statement and does not refresh his recollection.

20 MS. SEIFAN: Your Honor, what is not clear is at the
21 bottom, whether that's Mr. --

22 MR. FARBER: Excuse me. Here, Your Honor.

23 (Handing to the Court a copy of the unredacted
24 statement.)

25 (Whereupon the Court reviews the document).

1 THE COURT: All right. I don't see the redactions
2 in the unredacted form. What was under these marked out
3 portions?

4 MR. FARBER: The personal addresses of the
5 witnesses, Your Honor.

6 THE COURT: May I see it, please?

7 MS. SEIFAN: This is blacked out with the addresses.

8 THE COURT: I would like to see what was under those
9 blackened mark. I don't know if this page refers to one
10 witness or two witnesses.

11 MR. BURLINGAME: The second page of the report, the
12 first witness is on the first page. The second witness is on
13 the second page. And then there's the summary description of
14 the suspects. We can get the original report, Judge, it's
15 just not here.

16 THE COURT: It's not clear to me that this is this
17 witness' statement at the bottom of this page with the
18 redaction. Whether it's a summary of both.

19 MR. FARBER: May I look at it, Your Honor?

20 THE COURT: Here.

21 (Handing to counsel.)

22 MR. FARBER: The only reason, the first witness'
23 description is given right here.

24 THE COURT: Let me see it again.

25 MR. FARBER: The way I read it, Your Honor, the

1 detective wrote the description from each witness after the
2 statement by the witness.

3 MR. BURLINGAME: I don't believe that's clear from
4 the document. Judge, I may have a signed statement of the
5 witness from that date which he wrote out by hand, if Your
6 Honor is looking for something that is actually his statement.

7 THE COURT: May I see the signed statement?

8 MR. BURLINGAME: If Your Honor is looking for
9 something that is actually his statement.

10 MS. SEIFAN: Here, Your Honor.

11 (Handing to the Court.)

12 THE COURT: Thank you. I don't see a description of
13 the perpetrators in this signed statement.

14 MR. BURLINGAME: Precisely, Judge.

15 MR. FARBER: Your Honor, I believe that written
16 statement --

17 THE COURT: I can't hear you.

18 MR. FARBER: That written statement is asking what
19 happened, not what they look like. They have a police officer
20 interviewing him separate and distinct from the witness being
21 asked to write his own statement.

22 THE COURT: 3500 DM-3, the handwritten statement for
23 identification.

24 MR. FARBER: I believe that I'm up to letter K.

25 THE COURT: Sometime during the day you'll give me a

1 complete up-to-date list of your exhibits.

2 MR. FARBER: Absolutely, Your Honor.

3 THE COURT: Sir, look at the bottom four lines on
4 this page, which is 3500 EM-4, and tell me whether you
5 remember this as an accurate statement of what you now
6 remember these people looked like. Forget where it came from.

7 MR. FARBER: This is Exhibit K.

8 THE WITNESS: No, Your Honor, I don't remember.

9 THE COURT: I can't hear you.

10 THE WITNESS: No, Your Honor, I don't remember.

11 THE COURT: Okay. I'm not going to allow it in.

12 BY MR. FARBER:

13 Q Sir, do you recall anything about the physical appearance
14 of the people who were the robbers that day?

15 A No.

16 THE COURT: I'm not allowing it in because it's not
17 clear to me from the statement that this was what his then
18 statement was.

19 MR. FARBER: Unfortunately, the detectives who took
20 the statement are no longer available.

21 THE COURT: I understand that, and the jury
22 understands that. This happened a long time ago. And
23 therefore, we don't have all the evidence that we might have
24 now. And your decision will be based upon the evidence and
25 the lack of evidence and your evaluation of all of the

1 evidence in light of these problems of proof, correct?

2 All the jurors shake their heads in affirmation.

3 Neither J or K is in evidence.

4 BY MR. FARBER:

5 Q Sir, is it fair to state what you do recall, however, is
6 the two sets of feet running back to the rear of the truck?

7 A That's correct.

8 MR. FARBER: I have no further questions. Thank
9 you, sir.

10 MS. SEIFAN: No further questions, Your Honor.

11 THE COURT: Thank you very much, sir.

12 THE WITNESS: Thank you.

13 (Whereupon the witness is excused at 10:00 a.m.)

14 (Matter continued on the next page.)

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1 THE COURT: The next witness, please.

2 MS. SEIFAN: We're going to play a tape. I'm going
3 to read a stipulation, it's Government Exhibit 91-S.

4 THE COURT: 91-S.

5 MS. SEIFAN: United States of America against
6 Charles Carneglia: "It is hereby stipulated and agreed by and
7 between the United States of America by the undersigned
8 District United States Attorney and the defendant, Charles
9 Carneglia, by the undersigned attorneys that Government
10 Exhibit 91-A is an original reel-to-reel tape containing
11 recordings of Port Authority Police Department radio
12 frequencies and reported telephone calls of the Port Authority
13 Police Department desk at John F. Kennedy International
14 Airport on December 14th, 1990. Government Exhibit 91-B is a
15 fair and accurate copy of certain portions of Government
16 Exhibit 91-A. Government Exhibit 91-A and 91-B, together with
17 this stipulation, may be received in evidence. Dated February
18 11th, 2009."

19 Signed by myself and Curtis Farber. At this time,
20 Your Honor, we offer Government Exhibit 91-A and 91-B.

21 THE COURT: And 91-S?

22 MS. SEIFAN: And 91-S.

23 THE COURT: You have the transcript. Are you going
24 to use the transcript?

25 MS. SEIFAN: Yes, Your Honor. We prepared a

1 transcript as an aid for the jury.

2 THE COURT: All right. You can distribute it. That
3 will be 91-C.

4 Again, all of these transcripts are just for your
5 aid. It's what you hear that's the evidence. Do you
6 understand that?

7 (So marked as Government Exhibits 91-A, 91-B, 91-C
8 and 91-S in evidence.)

9 (Whereupon the audio is played for the jury.)

10 All right. Next witness, please.

11 MS. SEIFAN: The government calls Joseph Scarano.

12 THE COURT: Do you want to take a break, everybody?
13 Yes?

14 We'll take a few moments. Just leave those on your
15 chair.

16 (Whereupon the jury leaves the courtroom at 10:26
17 a.m.)

18 THE COURT: Take ten.

19 (Recess taken.)

20 (Matter continued on the next page.)

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1 THE COURT: Bring in the jury.

2 (Whereupon, the jury enters the courtroom at
3 10:38 a.m.)

4 THE COURT: Please be seated.

5 Swear the witness.

6 LAW CLERK: Please stand and raise your right hand.
7 (Witness sworn.)

8 J O S E P H S C A R A N O

9 called as a witness, having been first
10 duly sworn, was examined and testified
11 as follows:

12 THE WITNESS: Yes, I do.

13 LAW CLERK: You may be seated.

14 State and spell your name for the record.

15 THE WITNESS: Joseph Scarano.

16 J-O-S-E-P-H, last name, S-C-A-R-A-N-O.

17 DIRECT EXAMINATION

18 BY MS. SEIFAN:

19 Q Good morning, Mr. Scarano.

20 How old are you?

21 A I'm 45 years old.

22 Q Are you married?

23 A Yes, I am.

24 Q Do you have any children?

25 A I have four children.

1 Q What do you do for a living?

2 A I am a Port Authority police captain.

3 Q How long have you worked for the Port Authority Police
4 Department?

5 A 23 years.

6 Q What are your day-to-day responsibilities as a Port
7 Authority captain?

8 A I am assigned to JFK as the operations captain. My
9 day-to-day responsibilities is the manpower plan for Kennedy
10 Airport; monitoring 250-plus police officers, sergeants, and
11 lieutenants; managing the budget; and working hand by hand
12 with the operation of the Port Authority and all federal
13 agencies under the protection of all underpersonnel and the
14 President of the United States.

15 Q Walk us briefly through your various -- the various
16 assignments you have had at the Port Authority Police
17 Department prior to become a captain.

18 A I was appointed to the Port Authority Police in 1986 --
19 1986. I apologize. And I was assigned to Kennedy Airport for
20 17 years as a patrol officer. In 2003 I was promoted to the
21 rank of sergeant, and I worked at Kennedy and La Guardia
22 Airport crew chief and patrol supervisor, and in 2005 I was
23 promoted to the rank of lieutenant, where I was trained at
24 every Port Authority for this facility -- there's 13 of
25 them -- as a tour --

1 THE COURT: Slow down. Slow down.

2 THE WITNESS: Okay.

3 As a tour commander and incident commander with the
4 Port Authority police. In 2008 -- January 2008 I was promoted
5 to the rank of lieutenant, where I was assigned as the
6 commanding officer of the Lincoln Tunnel. And in August of
7 2008 I was reassigned to the Kennedy Airport as the operations
8 captain.

9 BY MS. SEIFAN:

10 Q I would just ask you to speak slowly.

11 A Yes.

12 Q How long were you on -- were you a patrol officer at
13 Kennedy airport?

14 A About 17 years.

15 Q I want to direct your attention to December 14, 1990.

16 Were you working that day?

17 A Yes, I was.

18 Q What was your shift?

19 A 11:00 p.m. to 7:00 o'clock in the morning. 11:00 to
20 7:00.

21 Q And where were you assigned on that day?

22 A I was assigned to Sector Car 892. That is a marked
23 sector car, and I was in uniform in a patrol car for the
24 airport.

25 Q Do you recall responding to a radio call for help during

1 your shift?

2 A Yes, I do.

3 Q And do you recall approximately what time that call came
4 in?

5 A About 5:00 a.m. or 0500.

6 Q And where were you when you received this radio call?

7 A I was parked in front of Building 110. That was the ski
8 deli. Myself and Officer Patillo were getting a cup of coffee
9 at that time in the morning and an egg sandwich.

10 Q And what was the call that you received?

11 A The call came over the police desk -- the Port Authority
12 police desk of a report of shots fired -- a report -- in the
13 area of Parking Lot Number 10.

14 Q What did you do after receiving that call?

15 A Well, knowing there is no Parking Lot Number 10 -- there
16 is a Hangar Number 10. I immediately started responding to
17 Hangar Number 10. I apologize. And I told Officer Patillo to
18 start going that way. It was about a mile from where we were.

19 Q Were you in a marked police car?

20 A Yes, I was.

21 Q And Officer Petriello was in the car with you at the
22 time?

23 A That's correct.

24 Q And what is Hangar 10?

25 A Hangar 10 is the American Airlines administration

1 building. It's where people punch in and punch out, where
2 payroll is done and where the employees for American Airlines
3 park their cars and they go over to where they work.

4 Q Do you recall how long it took you to get to Hangar 10
5 from where you were?

6 A Under a minute. It was pretty fast. I was moving pretty
7 fast.

8 Q What did you see when you arrived at Hangar 10?

9 A When I first pulled into the driveway of Hangar Number 10
10 I looked to my right, and I observed an armored car parked in
11 front of the front doors. I saw a lot of people standing in
12 the area. It looked like running around in a commotion. As
13 I got a little closer I saw what appeared to be a haze in the
14 air. Then I got a little closer and saw people waving me
15 over, and they just seemed to be very nervous. And then I
16 exited my vehicle.

17 Q When you say a haze in the air, what do you mean?

18 A Well, it appeared to me, judging by the call that came
19 over to me, that it could be spent gun powder. It appeared to
20 be a burnt -- like a burning in the air.

21 Q How would you describe the scene when you arrived?

22 A It was chaotic.

23 Q Was it still dark out when you pulled into the hangar?

24 A It was dark.

25 Q What was the lighting like in the area?

1 A It was well lit. The front of the building had several
2 lights right by the front door and the parking lot. It was
3 well lit.

4 Q Were there any other law enforcement officers there when
5 you arrived?

6 A No.

7 Q Just -- you and Officer Petriello were the first officers
8 to arrive?

9 A That is correct.

10 Q What was the first thing you did after you exited your
11 vehicle?

12 A Well, when I exited my vehicle I looked to my left, and
13 I looked down and I saw a male laying on the floor on his
14 belly and his arms were spread out above his head. And I saw
15 a handgun in the area of his hand. And my first inkling as
16 the first responder was to make sure the victim was okay. At
17 that point I was approached to my right by a male who worked
18 for the armored car company, and he engaged in conversation
19 with me.

20 Q How would you describe the armored car operator?

21 A Very, very shaken up. I remember his face like it was
22 yesterday. He was very pale, very nervous. He didn't respond
23 to my command at first.

24 Q What did he say to you?

25 A He was pointing to his left, which would be toward the

1 exit of the parking lot, and I asked him for a description of
2 the people that were involved or the person involved, and he
3 responded to me there were two male whites wearing American
4 Airlines uniforms, and he pointed to his left. But he took
5 a little prompting. He was very, very nervous.

6 Q What did you do then?

7 A I broadcast a description that the -- the armored car
8 operator gave me on the radio to the Port Authority police
9 desk, where they dispatched it to the rest of the officers
10 responding, and I went to treat the victim.

11 Q Did you -- did you talk to the victim? Was the victim
12 responsive?

13 A The victim was unconscious. He was groaning. He
14 appeared to be crawling -- slightly crawling away from the
15 armored car; so I did not engage in conversation with him. He
16 was unresponsive.

17 Q What did you do with the victim?

18 A Well, the first thing I, as a first responder trained in
19 the police academy is to ascertain his vital signs. I
20 attempted a wrist pulse, which was very, very faint. At that
21 point I lifted up the back of his coat, because he was lying
22 facedown, and I observed multiple holes, which were gunshots,
23 in his back, towards the lower part of his back. I also
24 observed a round, plastic item in his back, which was known to
25 me to be a shotgun wad. Once again, realizing how bad his

1 injuries were, I asked -- I asked for an expedite on our
2 ambulance staff and our doctor that we house at the airport
3 and attended to the victim by doing first aid with the gauze
4 or whatever I had in the first-aid kit.

5 Q You began doing CPR on the victim?

6 A Yeah. Within a short time his -- I checked his carotid
7 pulse, and I did not detect a pulse. So I did what I was
8 trained to do. I rolled the victim onto his back, and
9 I pulled him over by the foot onto the concrete slab and
10 started doing CPR on the victim. Officer Hurley, which was
11 another police officer that came a few minutes later,
12 administered oxygen with the resuscitator that we kept -- we
13 keep in the police cars.

14 Q Did you see any evidence that guns had been fired at the
15 scene?

16 A It was numerous metal casings, shell casings on the
17 ground in the area of the victim, and I recall seeing one
18 shotgun spent cartridge.

19 Q At some point when you were performing CPR did an
20 ambulance arrive?

21 A The Port Authority ambulance arrived I don't know how
22 much time later because I was attending to the victim. I
23 continued doing CPR. I do recall every compression that I did
24 blood was coming from the holes in the front of his body and
25 getting onto my uniform.

1 Q What happened after the ambulance arrived?

2 A I remember Officer Fiorello was the EMT. The Port
3 Authority police have an EMT on staff in the ambulance.
4 Officer Fiorello was the EMT, which is the emergency medical
5 technician, and Officer Michael Petriello was the driver.
6 They exited the ambulance and they brought over a stretcher,
7 put the victim onto the stretcher, and we went in the
8 ambulance. I went also with the ambulance, Officer Fiorello,
9 Officer Petriello, and there was a paramedic that was there.
10 I don't know where he came from, but he also administered
11 fluid through an IV in the back of the ambulance.

12 Q So you traveled with the ambulance to Jamaica Hospital?

13 A Yes. I went with the ambulance. We pulled up to the
14 front of Jamaica Hospital, which is a short distance from
15 Kennedy Airport. And I remember Officer Petriello panicking
16 because in front of the MP at the hospital they had moved the
17 first -- the emergency room. And he yelled back to me,
18 "Where's the emergency room?" And I directed him to go around
19 the corner. I was a little more familiar with the emergency
20 room. He went right around the corner, and we exited the --
21 the ambulance. I grabbed the IV fluid bag, and I took the
22 head of the ambulance into the trauma room.

23 Q What happened next?

24 A I remember walking in the door. I remember making --
25 walking in the emergency room door, making a left and then

1 making a right, taking the first exit to the left, and I was
2 pinned in the back. And they took the -- the victim off our
3 stretcher onto the gurney for the hospital. I was pinned
4 behind the gurney; so I couldn't get out. And I wound up
5 holding the IV fluid bag when the doctors came in to render
6 aid to the patient.

7 Q So you were present when the doctors were rendering aid
8 to the patient?

9 A Yes, I was.

10 Q What did you observe?

11 A I observed a doctor coming in. I don't know what type of
12 doctor he was, but I remember him opening up the victim's
13 chest in front of me. And I remember him doing some kind of
14 suturing. I couldn't see inside the chest. And I remember
15 them pulling out items. I couldn't see them, but I remember
16 hearing a tinning noise into a tin. I heard numerous tin
17 sounds. At that point I believe the nurse or somebody came
18 over to me and relieved me of my IV bag and put it on a pole
19 and I was asked to leave the area.

20 Q Did you ever see the victim again?

21 A Yes, I did.

22 Q When?

23 A The next day, on the 15th, I -- on December 15th I had
24 taken off. I was a little shaken up by the day's events
25 earlier; so I took the day off. I remember receiving a phone

1 call that morning from Lieutenant Kevin Hassett,
2 H-a-s-s-e-t-t. And he said, "Joe, you've got to come back in
3 to work. We have got to go to The Queen's Morgue to identify
4 the body and sign the release forms for the body."

5 So I came in to work, and I did what I had to do.
6 I went to The Queen's Morgue and identified -- I don't
7 remember the medical examiner's name, but I remember speaking
8 with a person at the medical examiner's office and identifying
9 the victim at The Queen's Morgue as the victim the day before
10 involved with the shooting.

11 Q After you left The Queen's Morgue, were you involved in
12 the investigation into the murder of that armored guard?

13 A Not at all, no.

14 Q Fair to say that after you left the morgue on
15 December 15th, 1998, you left the morgue and you had nothing
16 else to do with the investigation?

17 A No. Nothing at all.

18 Q Okay. I will show you some photographs.

19 A Okay.

20 Q I am showing you what has been marked for identification
21 as Government Exhibit 105B.

22 Do you recognize this photo?

23 A Yes, I do.

24 Q What do you recognize it to be?

25 A The front of American Airlines Hangar Number 10 and the

1 armored car in front of the building.

2 Q Is it a fair and accurate depiction of the way the scene
3 looked on December 14th, 1990?

4 A Yes, it is.

5 MS. SEIFAN: Your Honor, I move to admit Government
6 Exhibit 105B.

7 THE COURT: D, as in dog?

8 MS. SEIFAN: B, as in boy.

9 THE COURT: B, as in boy.

10 Admitted.

11 (So marked as Government Exhibit 105B in evidence.)

12 BY MS. SEIFAN:

13 Q I am going to show you what has been marked as Government
14 exhibit -- for identification as Government Exhibits 105E and
15 105A, the two of them together.

16 Do you recognize these photographs?

17 A Yes, I do.

18 Q What do you recognize it to be?

19 A The front of Hangar Number 10, where the shooting
20 happened.

21 Q Is it a fair and accurate depiction of the way the scene
22 looked on December 14th, 1990?

23 A Yes, it is.

24 MS. SEIFAN: I move to admit these exhibits, Your
25 Honor.

1 THE COURT: You are moving for A and B?

2 MS. SEIFAN: And E, as in Edward.

3 THE COURT: And C?

4 MS. SEIFAN: E, as in Edward.

5 THE COURT: You don't have them listed.

6 MS. SEIFAN: Oh, I apologize.

7 THE COURT: 105 --

8 MS. SEIFAN: E.

9 THE COURT: May I see it? Hold it up.

10 MS. SEIFAN: It is of the scene.

11 THE COURT: Admitted.

12 (So marked as Government Exhibit Numbers 105A, 105B,
13 and 105E in evidence.)

14 MS. SEIFAN: Permission for the witness to step off
15 the stand and explain the photographs, Your Honor.

16 THE COURT: Yes.

17 BY MS. SEIFAN:

18 Q Could you explain to the jury what we are looking at on
19 Government Exhibit 105B, the left photo first.

20 A This is the front of American Airlines Hangar Number 10.
21 This is where the armored car was when we first observed it,
22 the two Port Authority -- or three Port Authority police
23 vehicles. And right here to the left, right here between the
24 armored car and this mailbox is where the victim was laying
25 facedown.

1 Q And what are we looking at on the right photograph?

2 A This is the back -- the rear of Hangar Number 10; so you
3 would be facing -- in this picture you are facing west to the
4 rear of the armored car. Right here is where the victim was
5 laying, and the exit to the parking lot is in front of the
6 armored car, a little further going west.

7 Q Okay. And so this brown building --

8 A Right here. This is Hangar Number 10 where the front
9 doors are. The front doors are on the side where the armored
10 car is.

11 Q Okay.

12 THE COURT: Have him mark it.

13 What do you want him to mark?

14 MS. SEIFAN: Well, we have a close-up photograph,
15 Your Honor.

16 THE COURT: You don't want that marked at all.

17 MS. SEIFAN: No. No. I think we are okay.

18 THE COURT: Okay.

19 MS. SEIFAN: Okay.

20 BY MS. SEIFAN:

21 Q Government Exhibit 105A.

22 Can you explain what we are looking at in the left
23 photograph.

24 A This is front of Hangar Number 10, where the armored car
25 was parked. Right behind the armored car was the front doors

1 to the administration Hangar Number 10, and the victim was
2 laying right by the front bumper. On the grass right behind
3 the armored car.

4 THE COURT: Mark that with your initials.

5 THE WITNESS: Yes.

6 BY MS. SEIFAN:

7 Q Okay. And what are we looking in the right photograph?

8 A This is a little behind or a little east of the armored
9 car. These are the front doors of America Airlines Hangar
10 Number 10 where employees would come in to punch in and punch
11 out and where the payroll would be delivered to the Port
12 Authority Police Department.

13 Q And these are the what?

14 A Those are the front doors to the lobby of Hangar
15 Number 10.

16 Q And these are windows?

17 A These are windows painted with Christmas decorations.

18 Q Okay. Can you now explain what we are looking at in
19 Government Exhibit 105E.

20 A This is the curb right in front of the front doors of
21 American Airlines Hangar Number 10. This is the armored car
22 in question. This is the Port Authority police vehicle.
23 Right here is where the victim was lying at, half on the grass
24 and half on the concrete. And the clothes were on the grass.
25 This here is the Port Authority police resuscitator or an IBM

1 resuscitator with my first-aid kit that I use. And this is
2 the clothing that was there.

3 THE COURT: Have him mark with a stick figure
4 indicating the deceased's position and his initials.

5 BY MS. SEIFAN:

6 Q Please do that.

7 A Yes.

8 MS. SEIFAN: Thank you.

9 No further questions.

10 (Witness resumes the stand.)

11 CROSS-EXAMINATION

12 BY MR. FARBER:

13 Q Good morning, Captain?

14 A Good morning.

15 How are you?

16 Q Very good. Thank you.

17 Captain, you worked at this JFK Airport, you said,
18 for 17 years?

19 A 17 years as a patrol officer.

20 Q As a patrol officer?

21 A Uh-huh.

22 Q And as a patrol officer then you're fully familiar with
23 that hangar area, that terminal area, as well as many areas at
24 the airport?

25 A That area is not a terminal. That is more of a cargo

1 area. The terminals are about a mile and a half down the
2 road. I am familiar with the area, yes.

3 Q And this would be part of your regular patrol?

4 A Every police car at Kennedy Airport has a different
5 patrol area; so we can go into any one of them at a different
6 time, but that would be the Port Authority police patrol area.

7 Q And at around 5:00 o'clock in the morning, would it be
8 fair to say that would be a time that people were coming to
9 work to get started at American Airlines, as well as the other
10 airlines for the day?

11 A I don't know what time they start; so I don't know.

12 Q Well, in the years as a patrol officer, have you made any
13 observation as to the number of people who arrive at certain
14 hours to go to work?

15 A Kennedy Airport is a very, very busy place. 24 hours a
16 day, seven days a week there are people going in and out of
17 those buildings. I don't -- I don't patrol right from that
18 area 24 hours a day, but there are people coming out all of
19 the hangars and all of the buildings all day long and all
20 night long.

21 Q Now, to get into this area from the outside -- and by the
22 outside I mean from the public streets, how would you get into
23 this parking lot area outside Hangar 10?

24 A The service road opposite the way to get in is actually
25 called the North Service Road at Kennedy Airport. The North

1 Service Road is an alternate service road. There is an
2 entrance roadway to Hangar Number 10. It is about 100,
3 150 feet of a roadway with a guard booth maybe halfway
4 through, and at the end of the driveway you make a right next
5 to the -- that is what you are looking at there, where you
6 make a right-hand turn.

7 Q And on December 14th, 1990, was that guard booth present?

8 A I don't recall.

9 Q Do you recall whether or not there was any requirement to
10 either unlock a gate or other mechanism in order to gain entry
11 into this area?

12 A When I pulled into the parking lot, I pulled right in.

13 Q You pulled right in?

14 A Uh-huh.

15 Q And you came in off that service road?

16 A That is correct.

17 Q And when you arrived after receiving this call you saw
18 a group of people?

19 A I saw people standing in the area; that is correct.

20 Q How many people would you say that you observed?

21 A I don't recall. There was numerous.

22 Q Numerous.

23 And is it fair to state you first spoke to the guard
24 who was with the victim, Mr. Maldonado?

25 A That is the only person that I spoke to at the area, yes.

1 Q And the -- Mr. Maldonado indicated to you upon your
2 prompting that the people who did the robbery were two white
3 men?

4 A I didn't know his name. Just the name that I am hearing
5 now is the name I never knew. But the armored car operator?

6 Q Yes.

7 A Yes. He indicated to me it was two white males.

8 Q And, again, you indicated on direct examination that he
9 said both of them with wearing American Airlines uniforms?

10 A He said that they were wearing American Airlines
11 uniforms. He didn't both of them. He said they were wearing
12 American Airlines uniforms.

13 Q But "they" meaning plural?

14 A Correct.

15 Q You took it to mean both of them?

16 A That is correct.

17 Q And, in fact, based upon that description provided to you
18 by Mr. Maldonado, you broadcast that description -- or you
19 caused to have that description broadcast across the Port
20 Authority police radio?

21 A I did that, yes. I made that transmission.

22 Q You deemed it to be a reliable description given by the
23 guard moments after the crime.

24 A Within minutes after the crime.

25 Q Now, is it fair to state that there were other

1 eyewitnesses to this robbery?

2 A I don't know.

3 Q Did you see anyone else try to approach you or your
4 partner and say what they saw?

5 A No one else approached me, no.

6 Q Is that because were you working on Mr. Delgado Rivera at
7 that moment?

8 A I am assuming that, yes.

9 Q Did other police officers arrive at the same time as you
10 or shortly thereafter?

11 A Shortly thereafter.

12 Q How many police units responded?

13 A I know of -- I know two that I know of. I wasn't
14 counting. I was tending to the victim.

15 Q Now, you had been employed by the Port Authority police
16 for how long?

17 A 23 years.

18 Q And you, again, indicated were you working on
19 December 14th, 1990?

20 A That is correct.

21 Q And you have worked with various personnel over the years
22 at the Port Authority Police Department?

23 A That is correct.

24 Q Would that include Detective Sclafani?

25 A Sclafani.

1 Q Sclafani.

2 Do you recall that name?

3 A I recall the name, yes.

4 Q And also a Detective -- and I'll try not to mispronounce
5 it, and I'll spell it.

6 A Okay.

7 Q Hoell, H-o-e-l-l, Hoell.

8 A Doesn't sound familiar.

9 Q But Sclafani you do know?

10 A I know him as a Detective Sclafani, yes.

11 Q And he was a detective assigned to the Port Authority
12 Police Department?

13 A Yes, he was.

14 Q And as a detective, it would be his responsibility to
15 prepare or interview eyewitnesses to crimes?

16 A As a part of their investigation; that is correct.

17 Q And based upon your experience rising through ranks to a
18 sergeant, lieutenant, and captain, after these interviews were
19 conducted there would be -- the information obtained would be
20 put in official police reports?

21 A That is correct.

22 Q And there were specific forms that the Port Authority of
23 New York and New Jersey had which were for these police
24 criminal complaint follow-up reports?

25 A CCR follow-ups; that's correct. Criminal report

1 follow-ups, yes.

2 Q And it was the responsibility of the officers who
3 prepared this report to report as accurately as possible the
4 information that was provided to them?

5 A Yes.

6 Q And these records were kept in the normal course of
7 business?

8 A Yes.

9 Q And it was the normal course of business for the police
10 department to maintain all of these reports on file?

11 A That is correct.

12 MR. FARBER: One second, please.

13 BY MR. FARBER:

14 Q I am going to hand you what has been marked now as
15 Defense Exhibit L for identification.

16 If you will take a look over that report.

17 A Okay.

18 (Witness reviews the document.)

19 THE WITNESS: Okay.

20 BY MR. FARBER:

21 Q What I have handed you is Exhibit L for identification.

22 Those were reports that were prepared in connection
23 with the investigation of the robbery related that you just
24 testified to?

25 A This is the first time I have seen it, sir.

1 Q Do these forms appear to be the forms that would be used
2 by the Port Authority Police Department that you testified to
3 just before?

4 A These are Port Authority forms. Yes, they are.

5 Q They are.

6 They appear to be authentic forms?

7 A Yes.

8 Q But you did not see these forms yourself?

9 A No. It's the first time I have seen them.

10 Q Do You recognize the name on the lower left-hand side of
11 the first page?

12 A I recognize Sclafani. I don't recognize the other name.

13 MR. FARBER: Your Honor, I offer these forms again
14 as business records.

15 THE COURT: Denied.

16 MR. FARBER: I will make it subject to the motion
17 that we previously talked about.

18 THE COURT: Denied under 403 grounds and based upon
19 the testimony of the other occupants and what he was able to
20 observe at the time.

21 MR. FARBER: I am not sure I understand that last
22 part that you just said.

23 THE COURT: We had an occupant of the armored car
24 who testified to what he was able to observe.

25 MR. FARBER: I believe --

1 THE COURT: And it's not congruent with the detail
2 here; therefore, it is excluded as unreliable --

3 MR. FARBER: And, Judge --

4 THE COURT: -- and not indicating that it was given
5 by this eyewitness.

6 MR. FARBER: All right. If I can --

7 THE COURT: If you want further elucidation, you
8 will have it outside the presence of the jury.

9 MR. FARBER: Yes, sir.

10 THE COURT: And you understand, ladies and
11 gentlemen, that I have these little discussions without
12 dismissing you only to move the case, but they have nothing to
13 do with you.

14 BY MR. FARBER:

15 Q Do you recall in the year of 1990 -- so let's say January
16 through December of 1990 -- ever receiving any reports or
17 being advised to look for cars that had been spotted staking
18 out Hangar 10 over that one-year period of time?

19 A I don't recall.

20 Q As part of your patrol as a patrol officer, would it
21 be -- is it fair to state that you would be looking for cars
22 that were parked and that seem to have no legitimate purpose
23 to be in that area?

24 A It all depends on the circumstances. Like I said before,
25 Kennedy Airport has people parking all over the airport. If

1 we deemed suspicious -- if I have reasonable suspicions that
2 something is afoot, I would question it, yes.

3 Q And we're not talking about all over Kennedy airport.
4 I am talking about specifically the area Hangar 10.

5 A Unless we were dispatched if there was a call of any kind
6 of a disturbance, during routine patrol if we observed
7 something could be suspicious activity, sure. We would stop
8 and question it.

9 Q And so in this one-year period of time, as far as you
10 know, you were never directed -- no one observed any
11 suspicious activity of a car parked surveilling Hangar 10?

12 A I don't recall.

13 Q Were their security cameras present in 1990 outside
14 Hangar 10?

15 A I don't recall.

16 Q Do you recall whether or not there were security cameras
17 posted anywhere around the parking lot area?

18 A I don't recall, sir.

19 MR. FARBER: I have no further questions.

20 Thank you.

21 THE COURT: Thank you, sir.

22 That will be all.

23 THE WITNESS: Thank you.

24 THE COURT: Next witness please.

25 (Witness excused.)

1 MS. SEIFAN: The Government calls Gregory
2 DiCostanzo.

3 Oh, Your Honor, I'm sorry. Let me read a
4 stipulation before I call a witness.

5 Government Exhibit 11 S, as in Sam, reads as
6 follows:

7 "It is hereby stipulated and agreed by and between
8 the United States of America, by the undersigned Assistant
9 United States Attorney and the Defendant Charles Carneglia, by
10 his undersigned attorneys, that Government Exhibit 9 contained
11 six .38 caliber deformed bullets that were removed from
12 Albert Gelb's body on March 11th, 1976, by the medical
13 examiner Dr. Donald Jason.

14 "Government Exhibit 10 contains one deformed lead
15 bullet and two deformed pieces of lead. These items were
16 recovered from Albert Gelb's Volvo on March 11th, 1976, by
17 Detective Michael Kane of the New York City Police Department.

18 "Government Exhibit 9 and Government Exhibit 10,
19 together with the stipulation, may be received in evidence."
20 So stipulated, dated March -- I mean February 11th, 2009,
21 signed by Curtis Farber and myself.

22 At this time, Your Honor, we move Government's
23 Exhibits 9 and 10 and Government Exhibit 11S into evidence.

24 MS. SHARKEY: No objection.

25 THE COURT: Admitted.

1 (So marked as Government's Exhibits 9, 10, and 11S
2 in evidence.)

3 MS. SEIFAN: This stipulation is labeled Government
4 Exhibit 120S.

5 "It is hereby stipulated and agreed by and between
6 the United States of America, by the undersigned Assistant
7 United States Attorneys, and the Defendant Charles Carneglia,
8 by his undersigned attorneys, that Government Exhibit 120
9 contains two .380 automatic caliber discharged shells that
10 were recovered by Detective Hal Sherman of the New York City
11 Police Department's Crime Scene Unit at American Airlines
12 Hangar 10, John F. Kennedy International Airport on
13 December 14th, 1990.

14 "Government Exhibit 121 contains 1.12 gauge
15 Remington discharged shotgun shell, one piece of lead, and
16 four pieces of shotgun wadding that were recovered by
17 Detective Hal Sherman of New York City Police Department's
18 Crime Scene Unit at American Airlines Hangar 10, John F.
19 Kennedy International Airport, on December 14th, 1990.

20 "Government Exhibit 122 contains one piece of
21 shotgun wadding with blood on it that was recovered by
22 Detective Hal Sherman of the New York City Police Department's
23 Crime Scene Unit at American Airlines Hangar 10, John F.
24 Kennedy International Airport, on December 14th, 1990.

25 "Government Exhibits 120, 121, and 122, together

1 with this stipulation, may be received in evidence. So
2 stipulated."

3 Dated February 11th, 2009, signed by Curtis Farber
4 and myself.

5 At this time, Your Honor, we move to admit
6 Government Exhibits 120, 121, 122, and the stipulation 120-S.

7 MS. SHARKEY: No, objection.

8 THE COURT: Admitted.)

9 (So marked as Government Exhibits 120, 121, 122, and
10 120-S in evidence.)

11 MS. SEIFAN: At this time the Government calls
12 Gregory DiCostanzo.

13 THE COURT: Swear him, please.

14 LAW CLERK: Please raise your right hand.

15 (Witness sworn.)

16 G R E G O R Y D i C O S T A N Z O

17 called as a witness, having been first

18 duly sworn, was examined and testified

19 as follows:

20 THE WITNESS: I do.

21 LAW CLERK: You may be seated.

22 Please state and spell your name for the reporter.

23 THE WITNESS: Detective Gregory DiCostanzo. That's
24 D-i-C-o-s-t-a-n-z-o. Shield Number 7077.

25 MS. SEIFAN: Permission for the witness to have his

1 report.

2 THE COURT: I can't hear you.

3 MS. SEIFAN: Permission to have the witness have his
4 report up by the stand for his recollection.

5 THE COURT: Yes.

6 MS. SEIFAN: Your Honor, the witness has also
7 brought a demonstrative.

8 THE COURT: What is it?

9 MS. SEIFAN: It's an example of a bullet for him to
10 explain.

11 THE COURT: A large exhibit of a bullet?

12 MS. SEIFAN: Yeah. Just for him to explain.

13 THE COURT: Mark it.

14 MS. SEIFAN: Okay.

15 (Demonstrative Bullet marked in evidence.)

16 DIRECT EXAMINATION

17 BY MS. SEIFAN:

18 Q Good morning.

19 THE COURT: It is admitted for demonstrative
20 purposes.

21 BY MS. SEIFAN:

22 Q Mr. DiCostanzo, by whom you employed?

23 A New York City Police Department.

24 Q And for how long have you been employed by the New York
25 Police Department?

1 A Approximately 13 and a half years.

2 Q What is your title?

3 A Detective.

4 Q Where are you currently assigned?

5 A The forensics investigation division in the firearms
6 analysis section.

7 Q And how long have you work in the firearms analysis
8 section?

9 A Approximately five years.

10 Q What are your duties and responsibilities in that
11 section?

12 A I test firearms and ammunition for operability and
13 identification, as well as I test ballistic evidence for
14 matches and to discount non matches.

15 Q And you examine ballistic evidence?

16 A Yes.

17 Q Can you explain to the jury what is ballistics evidence.

18 A Ballistics evidence is anything left behind from the
19 shooting, the shell casings, bullets, or pieces of bullets.

20 Q Pieces of --

21 A Bullets. Bullet fragments.

22 Q Prior to working in the firearms analysis section where
23 did you work?

24 A The 115th Precinct, detective squad, and the Brooklyn
25 warrant squad.

1 Q And what type of training have you received in examining
2 and analyzing firearms and ballistic evidence?

3 A Upon assignment to the lab I received a six-month
4 training course in firearms and ammunition, operability, and
5 identification. On completion of that training I started
6 doing case work. Approximately two years later I started
7 another training for the microscopy section, which is the use
8 of the microscope to examine the ballistic evidence
9 microscopically. That was 18 months, and upon completion of
10 that in March of last year I started to doing case work there.

11 Q Have you continued to receive ongoing training?

12 A Yes.

13 Q What kind of ongoing training?

14 A We attend seminars, and training inhouse as well.

15 Q You also take proficiency exam?

16 A Yes. Once a year we take proficiency exams in every
17 discipline we work in.

18 Q And over the past five years how many different cases of
19 firearms and ballistics examinations have you conducted?

20 A Approximately 1300 firearms and at least 200 microscopy
21 cases with 2,000 pieces of evidence.

22 Q Have you testified previously in courts and given your
23 opinion regarding firearms and ballistics --

24 A Yes.

25 Q -- examinations?

1 A Yes.

2 Q Approximately how many times?

3 A 29 times.

4 Q What courts?

5 A Brooklyn, Queens, Manhattan state courts, and once in
6 Manhattan federal court.

7 MS. SEIFAN: Your honor, pursuant to Rule 702, may
8 this witness give his opinion in the field of firearms and
9 ballistics examination?

10 THE COURT: Yes.

11 BY MS. SEIFAN:

12 Q Were you provided with some ballistics evidence to
13 examine?

14 A Yes.

15 Q How many cases?

16 A Two separate cases.

17 Q When ballistics evidence is brought to the police lab, is
18 it typically assigned a number?

19 A Yes.

20 Q What was the number that was assigned to the ballistic
21 evidence you examined?

22 THE WITNESS: Your Honor, may I look at the
23 paperwork?

24 THE COURT: You may refresh your recollection, yes.

25 THE WITNESS: The 1976 case is 1976 F, as in Frank,

1 3450; and the 1990 is 1990 F, as in Frank, 19706.

2 BY MS. SEIFAN:

3 Q And the case 1976 F 3450 relates to who?

4 A The victim was Albert Gelb.

5 Q And the case 1990 F 19706 relates to who?

6 A The victim there was José Rivera.

7 Q I am showing you what is in evidence as Government
8 Exhibits 120 and 121.

9 MS. SEIFAN: Your Honor, as we noted in the
10 stipulation, Government Exhibits 120 and 121 were recovered
11 from the American Airlines hangar on December 14th, 1990.

12 THE COURT: Yes.

13 BY MS. SEIFAN:

14 Q Detective DiCostanzo, have you examined Government
15 Exhibit 121?

16 A Yes.

17 Q What does it contain?

18 A One 12 gauge shot shell, two pieces of plastic wadding,
19 two pieces of paper wadding, and a piece of lead.

20 Q Can you explain to the jury what is shotgun wadding?

21 A Shotgun wadding, these round disks here, are used to
22 separate the propellant from the gun powder from the actual
23 projectile or the bullets that are contained here. And when
24 a shotgun shell such as this one, which is double 0 buck
25 12 gauge, they have approximately nine lead balls, large BBs

1 about a quarter inch in diameter, and those would not be able
2 to seal inside the barrel because they are small pellets
3 intended to come out. So the shotgun wadding actually
4 attaches a seal for the gas pressure, which is what actually
5 forces the projectile down the end of the barrel.

6 So it can -- it sealed inside the casing,
7 approximately down here, and the propellant is back here, and
8 you have your pellets up here. The wadding will continue
9 down the length of the casing down the length of the barrel to
10 keep the gas pressure behind the projectile in order to make
11 it travel. If not for the wadding, the powder would burn
12 around the projectile and pretty much just blow them out the
13 end of the barrel. Once the projectile and the wadding leaves
14 the barrel, the wadding drops away because it is not very
15 heavy, it is very light, and the shotgun pellets continue on
16 their way.

17 Q When you say even the words "projectile," that is another
18 word for bullets?

19 A Yes.

20 Q What kind of shotgun shell is this?

21 A It's a Remington 12 gauge double 0 buck.

22 Q What does double 0 buck mean?

23 A The double 0 buck -- shotgun shells are arranged by --
24 the triple 0 would be the biggest pellets up to what they call
25 build loads or bird loads, which are very small. There would

1 be hundreds of tiny little pellets in it. It depends on what
2 you are using it for.

3 MS. SEIFAN: Your Honor, permission to publish the
4 shotgun shells for the jury.

5 THE COURT: To do what?

6 MS. SEIFAN: Publish the shotgun shells to the jury.

7 THE COURT: You can get up and show them what you
8 are talking about.

9 You can grab the wadding too. I think that would be
10 helpful.

11 THE WITNESS: This here is the shotgun shell, and
12 these are the waddings. They are about the same diameter as
13 the shell casing itself. And again, they are used to seal the
14 gun powder inside.

15 BY MS. SEIFAN:

16 Q So I am sorry.

17 Detective, what are the different parts of the
18 shotgun shell?

19 A This shotgun shell was unfired. It would have a primer,
20 which is this small circle in the middle, buried in that
21 circle. It has a dent now, but unfired it wouldn't have that
22 dent. That is caused by the firing pin. You have the brass,
23 which is -- this smaller case, that is brass, and generally
24 casing. Without this brass bottom the casing couldn't handle
25 the gas pressure; so you need brass to reinforce it. And the

1 top would be crimped closed and have the elements inside
2 contained; otherwise, they would fall out. Upon firing, this
3 opens up and all of the contents travel out the end of the
4 barrel.

5 THE COURT: So where is the material that you are
6 holding in your left hand in that shell?

7 THE WITNESS: This would sit approximately at the
8 edge of this brass here or just slightly below it, containing
9 the propellant or the gun powder on this end to keep it
10 separate from the ammunition, which is on this end.

11 THE COURT: The BBS or small elements are kept from
12 falling out the front by crimping?

13 THE WITNESS: Yes. This whole nose would be crimped
14 in.

15 BY MS. SEIFAN:

16 Q So it would be fair to say the wadding separates the gun
17 powder from the BBs?

18 A Yes.

19 THE COURT: But the wadding is expelled?

20 THE WITNESS: Yes. The wadding keeps the gas
21 pressure behind the projectiles and the bullets.

22 (Witness resumes the stand.)

23 (Matter continued on the next page.)

24 (Matter continued on the next page.)

25

1 DIRECT EXAMINATION (Continued)

2 BY MS. SEIFAN:

3 Q Let's turn to Government's Exhibit 120th.

4 What does that contain?

5 I'll give you a moment.

6 Detective, if you can keep your voice up, that would
7 be great.

8 A Inside 120 are two .38 cartridge casings.

9 Q Did you examine Government's Exhibit 120?

10 A Yes.

11 Q What is a cartridge casing?

12 A A cartridge casing is one component of a live cartridge.
13 It's typically on a semiautomatic the part that is extracted,
14 ejected and left behind. The other components, the components
15 of ammunition is you have a primer which is this here. The
16 cartridge casing itself. Inside these cartridge casings on
17 the semiautomatic type so we have a propellant for the
18 gunpowder. On top of that you would have a bullet inside.
19 And that bullet eventually is what is ejected and this cartage
20 casing gets extracted out of a semiautomatic firearm.

21 Q How do you know these shells have been fired?

22 A The firing pin having been struck leaves indentations and
23 the bullet and the projectile are no longer with it.

24 Q Now, you examined the evidence contained in Government's
25 Exhibit 120?

1 A Yes.

2 Q What were the results of your examination?

3 A These two cartridge casings match on the firing pin
4 impression and the breach face impression. The breach face is
5 this area outside of the primer. The primer area and anything
6 outside of that on the back side of the shell casing is
7 considered the breach face.

8 Q So I'm sorry, you said that -- explain to the jury again
9 what were the results of your examination, the conclusions
10 that you reached regarding the two shell casings?

11 A That both of these shell casings were fired from the same
12 firearm.

13 Q How did you reach that conclusion?

14 A By examining the firing pin and the breach face
15 impressions left on the cartridge case.

16 Q What kind of gun were these fired from?

17 A These were designed to be fired from a .380 semiautomatic
18 or fully automatic firearm.

19 Q You can put that away.

20 Detective DiCostanzo, that was a pistol or a
21 revolver you were talking about?

22 A A .380 is designed to be fired from a pistol.

23 Q A pistol?

24 A Yes.

25 Q I'm showing you what is already in evidence as

1 Government's Exhibit 9 and 10.

2 MR. NORRIS: Your Honor, for the jury, as noted by
3 the stipulation that we read, Government's Exhibit 9 contains
4 bullets that were recovered from the body of Albert Gelb and
5 Government's Exhibit 10 contains ballistics evidence recovered
6 from Albert Gelb's Volvo.

7 Q Detective DiCostanzo, did you examine Government's
8 Exhibit 9 and 10?

9 A Yes.

10 Q What does Government's Exhibit 9 contain?

11 A Nine contains six .38 caliber deformed lead bullets.

12 Q What is a deformed lead bullet?

13 A Once a bullet has been fired and it strikes an object,
14 typically the bullet being made of lead is very soft. If it
15 strikes anything harder than the lead, it will actually
16 deform, meaning its shape will be changed.

17 Q What does Government's Exhibit 10 contain?

18 A Another deformed lead bullet and two pieces of lead.

19 Q Did you examine the bullets that are contained in
20 Government's Exhibit 9 and 10?

21 A Yes.

22 Q How many bullets did you examine in total from these from
23 these envelopes?

24 A Seven.

25 Q What were the first steps you took in examining the

1 bullets?

2 A Upon receipt of the evidence, I checked, I opened the
3 envelopes to make sure that what it says on the envelope is
4 actually contained in the envelope. Once I determined that
5 everything listed is present, I'll take it out, I'll engrave
6 it with a unique identifier with my initials and a number in
7 sequence, then I'll start my notes and then my examination.

8 Q What do you do first?

9 A I do the notes. The notes are just a pedigree on the
10 bullet, diameter and a general description. Upon completion
11 of my notes, I'll actually put it under the compound
12 microscope that we use. Basically, it's two microscopes with
13 an optical bridge on it. Inside the bridge are mirrors and
14 prisms that allow me to look at two pieces of evidence side by
15 side under the microscope.

16 Q So what did you see when you looked at -- what did you do
17 next after you put them under the microscope?

18 A I take the bullets and place them typically left to right
19 and I'll start with one bullet, roll it until I find an area
20 that is very well marked. Once I find an area that looks very
21 well marked and would be repeatable, I'll take the other piece
22 of evidence and look for those same markings. If I find those
23 markings on the other bullet, I'll consider that the phase,
24 which in the case of these bullets, they were five right,
25 which is the twist of the rifling and the amount of layers and

1 grooves. I will start with groove one. I'll look at it. If
2 it matches the other bullet, I'll turn it, go to the next set
3 and see if there is matching there. I'll do that for all
4 five. If I can't find common markings, I'll take that piece
5 of evidence off and start with another one until I find
6 matches. Then the ones that I couldn't match, I'll try those
7 again and then try to match those to each other.

8 Q You used the word rifling?

9 A Yes.

10 Q Can you explain to the jury what you mean by rifling?

11 A Rifling is placed inside the barrel of any firearm with
12 the exception of most shotguns. And what is in that barrel --

13 Q I'm sorry, he is using Government's Exhibit 123 to
14 demonstrate what he is talking about.

15 A If this is a cutaway of a barrel, inside each barrel
16 you'll see lands and grooves. The lands are the raised areas,
17 that grooves are the engraved areas. During the manufacturing
18 process, they drill the barrel to this depth or the depth of
19 the land impressions.

20 Then they will cut the grooves into it or the groove
21 impressions. They will cut those in and during that process,
22 there is a few different tools they use and they all leave
23 markings after the process.

24 Anything that is on that tool will be transferred
25 inside this barrel when they make it. And in turn when the

1 bullet is being forced down that barrel, since it's softer
2 than the material the barrel is made out of, it will take
3 those impressions of the barrel in a mirror image onto the
4 bullet.

5 So what is a raised part on the barrel is a groove
6 on the bullet. And each one of these, when the manufacturing
7 is process is done, has individual markings that you are able
8 to compare from one to another and exclude others that were
9 made after this one.

10 Q What is the purpose of rifling?

11 A Rifling gives the bullet what they call gyroscopic
12 stabilization, which is the spin. If you ever try to throw a
13 football without a spin, it wobbles, it doesn't fly very well.
14 When one puts the spin on it, it goes further and straighter
15 and that is the purpose of it. That is called the gyroscopic
16 stabilization.

17 Q So going back to what you did, you took the bullets from
18 Government's Exhibit 9 and 10 and you put them under the
19 microscope and you started comparing one bullet to another
20 looking for common rifling and other characteristics that were
21 similar?

22 A Yes, matching striations. Striations are scratches that
23 show up on the bullet itself from being fired out of the
24 barrel.

25 Q What was the results of your microscopic examination of

1 these seven bullets?

2 A I have five bullets from one gun and two bullets from
3 another.

4 Q So four bullets from the ME's office matched one bullet
5 from the car?

6 A Yes.

7 Q And the two other bullets matched each other from the
8 ME's office?

9 MS. SHARKEY: Objection as to form.

10 MR. BURLINGAME: I believe one of the jurors needs a
11 break.

12 THE COURT: I see you want to leave?

13 A JUROR: No, I felt I was going to pass out.

14 THE COURT: You are not feeling well?

15 A JUROR: No.

16 THE COURT: All right, let's take a short break.

17 (Jury out at 11:38 a.m.)

18 THE COURT: 10 minutes.

19 (Recess.)

20 (Continued on next page.)

21

22

23

24

25

1 THE COURT: The juror is being examined by the nurse
2 and I should get a report within a few minutes.

3 Any applications while we are waiting?

4 MR. BURLINGAME: No, judge.

5 MR. FARBER: Judge, I'm going to end up briefing the
6 issue regarding the police report that I sought to introduce
7 earlier today from the Port Authority.

8 THE COURT: Well, this is somewhat different from
9 the police reports I tentatively indicated I was prepared to
10 let in. We have a witness here who by his own admission was
11 panicked and not in a position to observe. And in addition,
12 the report itself is ambiguous with respect to whether it's
13 what this witness said or some kind of compendium or
14 supposition of the author of the report.

15 It's not at all clear to me that the information
16 came from an observer. I think it's quite different from the
17 other reports you sought to put in.

18 MR. FARBER: I will brief it further. I understand
19 the Court's position.

20 My recollection of the witness' testimony was not
21 that he was not able to make any observations. I think that
22 is respectfully being read into his testimony.

23 THE COURT: No, he was able to make an observation
24 but it was very fleeting, he was terrified, and he was not in
25 a position to make a good observation, particularly of the

1 second shooter with the shotgun who was shooting from behind
2 him or with pants legs and shoes going by.

3 MR. FARBER: I would also note that when I tried to
4 then move the report in through the second witness, the Port
5 Authority officer, I was using the business records exception.

6 THE COURT: There is no question about the report.
7 The hearsay was in the report. That is the problem.

8 The document itself is authenticated but it's
9 hearsay and information in the report, that is a problem. In
10 this case there is no reliability whatsoever.

11 MR. BURLINGAME: While we're on the topic, we're
12 going to brief it fully with respect to the other reports but
13 I would point out precisely why I'm taking this position.
14 It's that hearsay in those other reports should not be
15 admissible. This is why they are not under the standards in
16 the case law and the Federal Rules and why we think it's
17 inappropriate for the Court to let in reports that are
18 completely unverifiable by the people who wrote the report.

19 Here we have a report where we can match it against
20 the witness and the witness says that's not what I saw. There
21 is no reason to believe these other reports are any more
22 accurate.

23 THE COURT: I'll look at your brief.

24 You may be right that I ought to be consistent and
25 let this one in as well. It's a good argument that I think

1 you are making.

2 MR. BURLINGAME: I think you should be consistent,
3 judge, but I think we should be consistent and conservative in
4 this instance.

5 Thank you.

6 THE COURT: They are still working.

7 (Pause in proceedings.)

8 THE COURT: Maybe we ought to convene again at
9 1:00 .

10 MR. BURLINGAME: While we're still on the record, I
11 just wanted to clarify in reference to the discussion we were
12 just having. I wanted to clarify the government's position
13 from yesterday, which is that we don't believe any of the
14 reports should come in. We're not seeking to admit the
15 notebook. We don't believe it's appropriately admitted. We
16 have to determine what our position will be as to whether or
17 not if your Honor decides to let in the other reports which we
18 don't believe are admission, whether or not we would seek to
19 introduce the notebook. We probably won't because we think
20 it's reversible error but we'll look into it more fully.

21 THE COURT: So we'll recess now until 1:00.

22 We'll tell the jury that.

23 (Luncheon recess.)

24 (Continued on next page.)

25

1 (Whereupon, the afternoon session began at
2 1:00 p.m.)

3 THE COURT: Bring in the jury. Let's have the
4 witness.

5 (Jury in at 1:00 p.m.)

6 THE COURT: Be seated. Do you feel better.

7 A JUROR: Yes.

8 THE COURT: Does everybody feel okay in the jury?

9 DIRECT EXAMINATION (Continued).

10 BY MS. SEIFAN:

11 Q Detective DiCostanzo, prior to the break you were talking
12 about the results of the microscopic examination that you
13 conducted on the seven bullets related to the Albert Gelb
14 case.

15 A Okay.

16 Q Would you remind the jury what were the results of your
17 examination of those seven bullets?

18 A The seven bullets I had fired from one gun and two fired
19 from another.

20 Q Can you explain to us which five bullets -- what exhibits
21 the five bullets that were from one gun came from?

22 A Five of those -- four of those bullets came from
23 Exhibit 9 and one came from Exhibit 10 were a match; and two
24 of the, the other two bullets that matched each other that
25 didn't match the other five also came from 9.

1 Q And Government's Exhibit 11-S indicates that Exhibit 9
2 came from Albert Gelb's body and Exhibit 10 came from the
3 Volvo.

4 So to summarize, Detective DiCostanzo, going back
5 for a moment to the 1990 case, you testified that you examined
6 two .380 shell casings?

7 A Yes.

8 Q And what kind of gun were those shell casings fired from?

9 A A pistol or semiautomatic or fully automatic pistol.

10 Q And you indicated you also examined the shotgun shell?

11 A Yes.

12 Q And you testified that it was a Remington .12 gauge 00
13 buck?

14 A It was a Remington .12 guage buck.

15 Q And how many B-Bs are in a Remington .12 gauge buck?

16 A Typically, it's nine.

17 MR. NORRIS: I have no further questions.

18 MS. SHARKEY: No questions.

19 THE COURT: Thank you, sir. That will be all.

20 MR. BURLINGAME: Is it okay, judge, for the
21 detective to keep his demonstrative exhibit?

22 THE COURT: Does anybody wish them retained for
23 purposes of argument or to send into the jury?

24 MS. SHARKEY: No.

25 THE COURT: Then why don't you keep them, sir.

1 THE WITNESS: Thank you.

2 THE COURT: Are you calling another witness?

3 MS. SEIFAN: Yes, the government calls Judy

4 O'Connor.

5 J U D Y O ' C O N N O R, having been called as a witness,
6 first being duly sworn, was examined and was as follows:

7 THE CLERK: Please state and spell your name for the
8 reporter.

9 THE WITNESS: My name is Judy O'Connor,
10 O-'-C-O-N-N-O-R.

11 MS. SEIFAN: Your Honor, permission for the
12 witnesses to have her notes up at the podium with her to
13 refresh her recollection if needed.

14 THE COURT: Yes.

15 DIRECT EXAMINATION

16 BY MS. SEIFAN:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Ms. O'Connor, what do you do for a living?

20 A I'm retired now.

21 Q What did you do prior to retiring?

22 A I was the manager of the forensic evidence analysis
23 section, New York City Police Department laboratory.

24 Q What was your title when you retired?

25 A Managerial criminalist.

1 Q How long did you work for the New York City Police
2 Department?

3 A For 26 years.

4 Q What year did you retire from the New York City Police
5 Department?

6 A 2005.

7 Q Can you briefly walk us through the various assignments
8 you had at the New York City Police Department?

9 A Yes, in 1980 I was hired as a chemist trainee and I was
10 in the control substance analysis section which analyzes
11 narcotics. And after that, I was I guess approximately eight
12 months later I was in the serology unit of the police
13 laboratory as a chemist. I analyzed evidence for blood,
14 seminal fluid, other body fluids.

15 In 1989, I was transferred to the hair and fiber
16 unit and I analyzed hairs and fibers removed from various
17 kinds of evidence and did comparison of those hairs and fibers
18 with known standards.

19 In 1997, I was promoted to supervisor as a
20 criminalist of the hair and fiber unit.

21 And in 2002, I was promoted to manager of the
22 forensic evidence analysis section.

23 Q Where were you assigned in 1990?

24 A I was assigned to the hair and fiber unit of the police
25 lab.

1 Q What was your title at the time?

2 A I was an assistant chemist.

3 Q What were your duties and responsibilities as an
4 assistant chemist in the hair and fibers unit?

5 A We were -- we examined evidence submitted to laboratory
6 for the presence of hairs and fibers. We would remove those
7 hairs and fibers and in the case of hairs, we would identify
8 them as to species, body origin and possible racial
9 characteristics and then compare them to known standards which
10 would be submitted, not in every case, sometimes standards
11 were not available, and we would try to determine if the hairs
12 that we removed from the object were similar in
13 characteristics to any standards that were submitted.

14 We also did the same kind of analysis with synthetic
15 and natural fibers.

16 Q When you received evidence, did your lab assign the
17 evidence a number?

18 A Yes, it did.

19 Q Where did this evidence come from?

20 A The evidence in this particular case or just evidence in
21 general?

22 Q In general.

23 A It was usually submitted to the laboratory usually by New
24 York City Police officers but also on occasion we would accept
25 evidence from the Port Authority police or other agencies

1 within the State of New York for analysis.

2 Q This is evidence that came from different crime scenes?

3 A Yes, they were.

4 Q Did you review any documents in preparation for your
5 testimony today?

6 A Yes, I did.

7 Q What did you review?

8 A The case file that I did when I did the analysis in 1990.

9 Q On December 14, 1990, did the police department
10 laboratory received evidence from the 113th Precinct?

11 A Yes, it did.

12 Q What did the lab receive?

13 A It received an envelope containing a baseball cap and a
14 small manila envelope with hair samples.

15 Q So in the manila envelope were hair samples?

16 A Yes.

17 Q Did the lab assign this evidence a number?

18 A Yes, it did.

19 Q What number did it assign?

20 A 90-7105.

21 Q Did there come a point when you examined the hat and the
22 contents of the envelope?

23 A Yes.

24 Q I'm showing you what has been marked for identification
25 as Government's Exhibit 115. The bag has been identified as

1 118 and the envelope is identified as Government's
2 Exhibit 117.

3 Would you take a look at these.

4 Tell me if you recognize these items?

5 A Yes, this is the evidence I received on this case.

6 Q How do you know that?

7 A It has my initials and the laboratory number on each
8 item.

9 Q So Government's Exhibit 117, could you tell the jury what
10 this is?

11 A This is a manila envelope. Do you want me to read what
12 is labeled on it?

13 Q This is the envelope that you received that contained the
14 hair samples?

15 A Yes.

16 Q And that was received from whom?

17 A From Detective Sherman of the crime scene unit.

18 Q And Government's Exhibit 115, take it out of the bag.

19 Can you just show the jurors.

20 Hold that up.

21 MS. SEIFAN: I'm sorry, your Honor --

22 Q How do you recognize this hat?

23 A Again, it has my initials and the laboratory number
24 written on the hat.

25 Q That was the number you testified to before?

1 A Yes.

2 Q And the bag?

3 A That also has my initials and the laboratory number on
4 it.

5 MS. SEIFAN: Your Honor, move to admit.

6 THE COURT: Admitted.

7 MS. SHARKEY: No objection.

8 (So marked in evidence as Government's Exhibit 115,
9 117, 118.)

10 Q Can you just hold up the hat for the jury to see.

11 A It has my initials on the number on the brim.

12 THE COURT: Describe the hat, please.

13 MS. SEIFAN: Can she step off and show it to the
14 jury?

15 THE COURT: Show it to the jury and describe it to
16 them.

17 A It's a blue baseball cap. It has a red, white and blue
18 logo, AA with the wings.

19 Q And your initials are in yellow writing?

20 A My initials on the brim, JOC, and the lab number 90-7015
21 is also on the brim in yellow.

22 Q What did you do after receiving the evidence in this
23 case?

24 A For the baseball cap, the first thing I did was a visual
25 examination looking for hairs. Some hairs are large enough to

1 see with the naked eye. I look at the outer surface as well
2 as the inner surface. I then took a clear piece of adhesive
3 tape and tamped all over the whole interior, all over the hat
4 band on the inside, the brim as well as the outer surface to
5 get any hairs that were still adhering to the hat.

6 I would then take that tape and go to a stereo
7 microscope, which is a fairly low power microscope, and you
8 examine the tape and anything that looks to be a hair, you
9 remove from the tape and then mount it on glass microscope
10 slides so you can examine it with a higher power microscope.
11 And that's what I did ins this case. I removed some hairs and
12 mounted them on microscope slides.

13 Q How many hairs did you mount on microscope slides?

14 A From the hat, I mounted four hairs -- excuse me, five
15 hairs. Then there were also numerous animal hairs which to me
16 looked like animal hairs, as I said, from my initial
17 examination and those were just put in a paper fold and only a
18 representative sample. They were some of the five hairs that
19 I mounted. The rest were maintained in the paper fold.

20 Q Did you also examine the hairs in the manila envelope?

21 A Yes, there were two hairs in the manilla envelope which I
22 removed and mounted on glass microscope slides so I could
23 examine them with a high powered microscope.

24 Q How many hairs were mounted on microscope slides?

25 A Seven hairs.

1 Q And you conducted an examination of those seven hairs?

2 A Yes, I did.

3 Q What did you find? What did you conclude?

4 A For the hairs that I mounded from the hat, two of those
5 hairs were brown human hairs, transitional hairs. What a
6 transitional hair is, it's a hair that is between two growth
7 areas. For example, you have head hair and facial hair and a
8 transitional hair will show you characteristics of both. That
9 comes from your sideburns, so that is considered a
10 transitional hair. Something around the forehead might be
11 transitional, it's going from a head hair to a facial hair.
12 Those are called transitional hairs. And that's what the two
13 human hairs that I removed from the hat were, they were
14 transitional hairs. The other hairs were animal hairs, they
15 were reddish brown colored animal hairs.

16 Q What about the hairs that you examined from the manilla
17 envelope?

18 A One of those hairs was a colorless hair with Caucasian
19 racial characteristics, a head hair. The other hair was a
20 reddish brown animal hair.

21 Q I'm showing you what has been marked for identification
22 as Government's Exhibit 116 A and 116 B.

23 Can you look at this.

24 A Yes.

25 Q Do you recognize these items?

1 A Yes, again my initials and the laboratory number are
2 written on the outside of each of those items. These are the
3 holders that the glass slides are put in for storage after you
4 are done with your microscopic examination.

5 Q And inside those boxes contain the slides?

6 A These are the slides that were made from the hairs that I
7 removed from the hat and the hairs that were in the envelope.

8 MS. SEIFAN: Your Honor, we offer it.

9 THE COURT: Admitted.

10 (So marked in evidence Government's Exhibit 116A,
11 116B.)

12 Q How many slides are contained in those two boxes?

13 A There are two slides in this box. This is the box that
14 has the hairs from the envelope. And there are five slides in
15 this box and these are the hairs that were mounted from the
16 hat.

17 Q Did you also secure the tape that you used to process the
18 hat?

19 A Yes.

20 Q What did you do with the evidence after you examined it?

21 A It's returned to the original packaging and it's sealed
22 in an envelope. In this case it was a clear security envelope
23 that the evidence was sealed in. And then I returned it to
24 the evidence control desk in the police laboratory.

25 MS. SEIFAN: No further questions.

1 MS. SHARKEY: No questions. Thank you.

2 (Witness excused.)

3 THE COURT: No further questions?

4 MS. SHARKEY: No.

5 THE COURT: Okay.

6 (Witness excused.)

7 MS. SEIFAN: The government calls Paul Goncharoff.

8 THE COURT: Swear the witness, please.

9 P A U L G O N C H A R O F F, having been called as a
10 witness, first being duly sworn, was examined and testified as
11 follows:

12 THE CLERK: Please state and spell your name for the
13 reporter.

14 THE WITNESS: My name is Dr. Paul Goncharoff, and
15 that is spelled G-O-N-C-H-A-R-O-F-F.

16 DIRECT EXAMINATION

17 BY MS. SEIFAN:

18 Q Good morning, Dr. Goncharoff.

19 Where are you currently employed?

20 A I'm employed at the Office of Chief Medical Examiner,
21 department of forensic biology.

22 Q What is your educational background?

23 A My educational background is I have a bachelor's degree
24 in biology and a Ph.D. in molecular biology both from the
25 University of Illinois at Chicago.

1 Q Did your Ph.D. studies focus on a particular area of
2 molecular biology?

3 A My Ph.D. studies revolved around molecular biology which
4 actually it was in molecular biology which involves the study
5 of DNA. And for my Ph.D. studies, I did research experiments
6 with bacterial DNA.

7 Q What did you do prior to working at the Office of the
8 Chief Medical Examiner?

9 A Prior to that, well, I completed my doctorate in 1987 and
10 then I proceeded with post-doctoral studies here in New York
11 City and I continued to work with DNA primarily from bacteria.
12 So my expertise is in DNA and in particular, sequencing DNA,
13 which was the determination of the exact order of the basic
14 building blocks of DNA.

15 Q How long have you been employed at the Office of the
16 Chief Medical Examiner?

17 A For the past 11 years.

18 Q What is your position?

19 A My position is criminalist level four.

20 Q What is a criminalist?

21 A A criminalist is an analyst who examines physical
22 evidence that is used in criminal matters, criminal
23 investigations.

24 Q How many levels of criminalist are there at the Office of
25 the Chief Medical Examiner?

1 A There are four levels, levels one, two, three and four.

2 Q Is criminalist four the highest level you can achieve?

3 A Yes, it is.

4 Q What are your duties and responsibilities as a
5 criminalist four?

6 A My duties include supervising analysts who examine
7 physical evidence used for criminal investigations, for
8 example, hairs and biological fluids which are then subjected
9 to DNA testing. And I also write and review reports that are
10 based on these tests.

11 Q What is the field of forensic biology?

12 A The field of forensic biology is biology as it pertains
13 to legal matters, the use of biology, biological experiments
14 as they pertain to legal matters.

15 Q What group do you currently work in in the department of
16 forensic biology?

17 A I supervise mitochondrial DNA.

18 Q What kind of training have you received in the area of
19 forensic biology?

20 A I've received in-house training both in theoretical and
21 practical aspects of evidence examination. I have also
22 received training from the FBI laboratory in mitochondrial DNA
23 analysis.

24 I also regularly go to scientific meetings where
25 there is a free exchange of information, forensic related.

1 Q Do you supervise the mitochondrial DNA group in the
2 Office of the Chief Medical Examiner?

3 A Yes, I do.

4 Q How many people do you supervise?

5 A I supervise three people.

6 Q Is your laboratory accredited?

7 A Yes, it is.

8 Q Who is it accredited by?

9 A It is accredited by ASCLDLAB, which stands for the
10 American Society of Crime Laboratory Directors Laboratory
11 Accreditation Board and we're also accredited by New York
12 State.

13 Q Is it fair to say that you are primarily responsible for
14 establishing mitochondrial DNA procedures at the department of
15 forensic biology?

16 A Yes, I was the project manager for the validation of
17 mitochondrial DNA techniques in the department. And what
18 validation experiments are are experiments that the laboratory
19 will run to begin using a certain procedure in testing case
20 work samples. And the reason that we do these validation
21 experiments is to show that the given technique is reliable
22 and accurate.

23 Q Have you received any certification?

24 A Yes, I am a certified fellow with the American Board of
25 Criminalistics.

1 Q Do you teach any classes in the area of forensic biology?

2 A Yes, I have taught in local universities and colleges.
3 I've taught at Yeshiva University, Stern College, and also at
4 Pace University, all in New York City.

5 Q Have you also given presentations about mitochondrial
6 DNA?

7 A Yes, I have. I've presented at least once in every
8 borough of New York City to District Attorneys to give them
9 background information about mitochondrial DNA testing.

10 Q So you do -- do you also give internal talks about
11 mitochondrial DNA?

12 A Yes, I participate -- I present regular training talks.
13 I should say I present training talks regularly as part of our
14 training program in-house.

15 Q How many mitochondrial DNA tests have you done at the
16 department of forensic biology?

17 A I've done thousands of tests.

18 Q How many mitochondrial DNA tests have you supervised?

19 A Thousands.

20 Q Have you ever testified in court and given your opinion
21 in the field of forensic biology and mitochondrial DNA
22 analysis?

23 A Yes, I have.

24 Q How many times?

25 A In mitochondrial DNA analysis, it has been one time in

1 the Bronx State Court.

2 Q And the other time was forensic biology?

3 A Yes. And that was in Richmond County, in Staten Island
4 State Court.

5 MS. SEIFAN: Your Honor, at this time pursuant to
6 Rule 702, may this witness give his opinion in the field of
7 forensic biology and mitochondrial DNA analysis?

8 THE COURT: Yes.

9 MS. SEIFAN: Your Honor, permission for the witness
10 to step off the stand. He prepared some slides as an aid for
11 the jury.

12 THE COURT: Granted.

13 What Exhibit numbers are these, 147 A to G?

14 MS. SEIFAN: Yes.

15 THE COURT: Are you offering them?

16 MS. SEIFAN: Sure, your Honor. We offer them.

17 THE COURT: No objection?

18 MS. SHARKEY: No objection.

19 THE COURT: They are received.

20 (So marked in evidence as Government's Exhibit 147A
21 to G.)

22 THE COURT: Members of the audience, I suggest that
23 you shift all the way down the your right to be able to see
24 what is going on.

25 Q Dr. Goncharoff, what is DNA?

1 A DNA is the genetic blueprint that makes us all human.
2 And if you were to be able to see DNA, it would look like a
3 twisted ladder. And what this diagram shows is a portion of
4 that ladder if you were to untwist it.

5 And I'm just going to run through some basics about
6 DNA with you. And the most important thing are the basic
7 building blocks. There is a four letter code that all DNA
8 has. And that is -- and you have probably heard this, A, G, C
9 and T.

10 And these are -- these basic building blocks of DNA
11 are known as bases. DNA consists of -- you could compare this
12 to the rungs and rails of a ladder. Where all of us have the
13 same rails, while it's the rungs, the actual order or sequence
14 of the bases that differs between us.

15 And just to give you a little bit more information,
16 DNA consists of two, we call them strands. And there are
17 certain rules of base pairing where if you have A on one
18 strand, you'll have a T on the other and vice versa. A T on
19 one strand will pair with an A on the other. And then where
20 you have a G or a C, where there is a G, it will pair with a
21 C. Where there is a C, it will pair with a G such that if we
22 know the order of the bases on one strand, we'll also know
23 them for the other strand as well.

24 Q How many types of DNA are there?

25 A Human cells contain two types of DNA. There is nuclear

1 DNA and mitochondrial DNA.

2 Now, if you compare or view the cell like a fried
3 egg sunnyside up, the yoke of the egg would be comparable to
4 the nucleus in which is found the nuclear DNA while the white
5 of the egg contains the cellular structures known as
6 mitochondria and within the cellular structures is
7 mitochondrial DNA.

8 And just to give you an idea of the sizes that we
9 are dealing with here, if you take an average size human cell
10 and stack it, stack one cell next to each other in the row,
11 you'll be able to fit about 2500 cells in an inch.

12 Q Where is DNA found?

13 A DNA, I went over that just a little while ago. Nuclear
14 DNA is found in the nucleus, and mitochondrial DNA is found
15 outside of the nucleus. And the way that nuclear DNA is
16 inherited is from both mother and father. So we get half of
17 our DNA from our father and half of our DNA from our mother.

18 Q How is mitochondrial DNA passed?

19 A Mitochondrial DNA is passed along a little bit
20 differently and that is shown in the next slide. And
21 mitochondrial DNA is passed from mother to children. And this
22 is known as maternal inheritance. So this slide demonstrates
23 that. For example, say that you have a husband and wife here
24 and they have two daughters and a son. The colors, the shades
25 of these people indicate that they have the same mitochondrial

1 DNA type.

2 So this son and his sisters, this brother and two
3 sisters would have the same mitochondrial DNA as their mother.

4 Now, when the daughter has two children, in this
5 case two boys, her children will have the same mitochondrial
6 DNA type as their mother as well as their grandmother as well
7 as maternal relatives like their uncle and aunt.

8 Meanwhile, over here where the son gets -- produces,
9 has a son and a daughter, they don't have the same
10 mitochondrial DNA as him, they have the same mitochondrial DNA
11 type as their mother.

12 Q Is nuclear DNA unique to an individual?

13 A Yes, nuclear DNA is unique to an individual.

14 Q Except for identical twins?

15 A Except for identical twins.

16 Q And mitochondrial DNA, you just explained basically
17 everyone related to you on your maternal side has the same
18 mitochondrial DNA?

19 A That's correct.

20 Q Under what circumstances is mitochondrial DNA useful
21 mitochondrial DNA testing useful?

22 A Why do we do mitochondrial DNA testing is for certain
23 types of samples. Here is a good example when we have hair
24 shafts, and hair shafts are hairs without the root. And why
25 is mitochondrial DNA testing useful for that? In hair shifts

1 you have little or no nuclear DNA for testing while there
2 usually is enough mitochondrial DNA for mitochondrial DNA
3 testing.

4 Also, if the sample is compromised or, for example,
5 like a decomposed body or a very old sample where all DNA is
6 starting to degrade or to become -- to be decomposed or
7 destroyed, you have a better chance of getting mitochondrial
8 DNA type or profile versus nuclear DNA.

9 And one of the reasons behind that is that there are
10 just so many more copies of the mitochondrial DNA versus
11 nuclear DNA. It becomes a numbers game.

12 Then also it's useful in missing persons testing
13 where the person who you need a reference sample for is gone,
14 is missing, you have nothing to compare to with nuclear DNA to
15 the -- say that you find remains, you can with mitochondrial
16 DNA, you can go and test maternal relatives like the person's
17 mother's DNA and that should be the same as that of the
18 missing person, her son or daughter and then have that as a
19 comparison sample.

20 Q Is it fair to say that if possible, you try to conduct
21 nuclear DNA testing first?

22 A Yes.

23 Q Why is that?

24 A With nuclear DNA testing, it is -- it is much more
25 discriminating. So.

1 We can say with higher confidence that the profile
2 of a sample belongs to a certain person compared to
3 mitochondrial DNA testing.

4 Q In simple terms, can you explain mitochondrial DNA
5 testing?

6 A Okay.

7 The first step of the testing procedure involves
8 separating, isolating the mitochondrial DNA in liquid form
9 from the cell. And this is shown in this diagram like this.
10 And that is done through a process known as DNA extraction.
11 So we're removing the mitochondrial DNA from the cells in
12 liquid form.

13 After we do that, we do what is shown in the next
14 slide. And at that point we copy, we make many copies of
15 specific regions of the mitochondrial DNA that we want to
16 study, and this is done using a procedure known as PCR
17 amplification, preliminary chain reaction amplification. And
18 you can think of it as analogous to molecular Xeroxing. We're
19 making lots of copies of the DNA that we want to study.

20 After that, we measure that DNA that we have copied,
21 that we have amplified to see whether we have enough to work
22 with. And if we find that we do, then we proceed further.

23 Q What tests do you run after determining that you have
24 enough mitochondrial DNA for analysis?

25 A We run two tests routinely. One is known as linear

1 array, and the other is known as DNA sequencing.

2 Q Can you explain what is linear array?

3 A Linear array is a DNA color test that produces an array
4 of blue bands on a white strip measuring about a quarter inch
5 by 3 inches in length. And this array of blue bands is like
6 -- it looks like a simple supermarket bar code of the
7 mitochondrial DNA profile.

8 Q What is DNA sequencing?

9 A DNA sequencing on the other hand is the determination of
10 the exact order of the bases that we talked about before in
11 the earlier slides within several regions of the mitochondrial
12 DNA.

13 Q What is the main difference between these two tests?

14 A Linear array is easier to perform but it's less
15 informative than DNA sequencing. We routinely yield linear
16 array yield information on about 20 positions on the
17 mitochondrial DNA. And by positions, I'm referring to bases
18 while DNA sequencing gives you information on over 600
19 positions, and not only that, it also tells you the exact
20 order of those bases.

21 Q Are there any specific regions of the mitochondrial DNA
22 that you test?

23 A Yes, there are.

24 If you were to make a blowup and take a closer look
25 at the mitochondrial DNA, it's circular, the DNA molecule is

1 circular. And we look at two regions located in this portion
2 of the molecule and they are labeled as HV-1 and HV-2. And
3 what that stands for is hypervariable region one and
4 hypervariable region two. And basically what that means is
5 that those are the two regions that are the most different
6 between any two people.

7 Q What does the number mean 16,569 DP?

8 A If you remember when we were looking at the DNA molecule
9 and we talked about bases, I told you that there were two
10 strands in the molecule. When you look at the two bases that
11 are pairing with each other, that is known as a base pair.
12 And what this is saying is that the total size of this
13 circular DNA molecule is 16,569 base pairs.

14 Q How many base pairs are located in these two?

15 A Approximately 300 base pairs each, so altogether it comes
16 out to a little over 600 bases, 610 to be exact.

17 Q So when you conduct mitochondrial DNA analysis, you are
18 not looking at the entire mitochondrial. You are looking
19 at -- you are focusing on certain areas. Tell the jury why
20 you focus on HV-1 and HV-2?

21 A We only look at these two areas because these are the
22 most different. Looking at the rest of the molecule would be
23 a lot more work, would take a lot longer and wouldn't yield
24 that much more information. So these are the areas that are
25 the most different between you and me.

1 Q You can retake the stand.

2 MR. NORRIS: Permission for the witness to refer to
3 his notes if needed.

4 THE COURT: Yes.

5 Q Dr. Goncharoff, how does physical evidence that you
6 examine get to the lab?

7 A It is brought to the lab by a member of the police
8 department and it is brought to someone in our evidence unit.

9 Q Where is the evidence stored?

10 A The evidence is stored in the possession of the evidence
11 unit under -- in secure areas. It's locked either in cages or
12 drawers.

13 Q Tell us generally what happens next after the police
14 department has brought over the evidence and it's locked up in
15 the facility?

16 A The evidence like I said is under the control of the
17 evidence unit. That means that it's secure in secure storage
18 and until the analyst who is working on the particular case
19 needs to look at the evidence, they will go to the evidence
20 unit and they will ask for that evidence. And we keep track
21 using the chain of custody forms when that piece of evidence
22 was signed out and by whom.

23 So when an analyst goes to the evidence unit and
24 takes out some evidence, they will sign the chain of custody.
25 They will date it. They will work on the evidence and then

1 they will bring it back to the evidence unit when they are
2 done for that particular day and once again, that will be
3 signed over back to the evidence unit.

4 Q Did the forensic biology lab receive evidence relating to
5 a case involving a victim named Jose Delgado Rivera?

6 A Yes, we did.

7 Q Was a unique identifying number assigned to this case?

8 A Yes, it was.

9 Q What was that number?

10 A It was FB 90-2450.

11 Q What items did the forensic biology lab receive?

12 A We received two slide cases, one containing five hairs,
13 the other containing two hairs and all of these hairs were
14 mounted on slides. We also received a blue cap as well as a
15 tape lift and as well as a paper fold containing possible
16 hairs and fibers.

17 Q I'm showing you what is already in evidence as
18 Government's Exhibit 116 A and 116 B.

19 Do you recognize these items?

20 A Yes, I do. I see our laboratory identification mark on
21 there for this particular case number, FB 90-2450. I see the
22 analyst's initials on there, the date and also item numbers.

23 Q So those two slides boxes contain the set of mounted
24 hairs you referred to before?

25 A Yes, one of them is labeled item 1A and the other one is

1 labeled item 1B.

2 Q What is a tape lift?

3 A A tape lift is -- you can think of it as a wide piece of
4 tape that is used to pick up hairs and debris from physical
5 evidence like for example a car seat or what have you.

6 Q What is a paper fold?

7 A A paper fold is just a piece of paper available in a
8 laboratory. It's usually a square or a circle maybe a couple
9 of inches in length. And that's used just to put loose hairs
10 or fibers in there and the paper then is folded over those
11 hairs and fibers and sealed with tape.

12 Q How many hairs were on the slide?

13 A There was one hair present per slide. So there were
14 seven slides, so a total of seven hairs.

15 Q Did the lab conduct mitochondrial DNA analysis on any of
16 the hairs?

17 A Yes, we conducted testing on four of those seven hairs.

18 Q Did the lab assign numbers to those four hairs?

19 A Yes, they are item 1A-1, item 1A-2, item 1A-4 and item
20 1B-1.

21 Q Why did the lab choose four hairs?

22 A We chose four because it's our standard policy only to
23 test several hairs per case. And in this case these
24 particular hairs were the longest. And we also have a certain
25 size requirement for a sample which is 2 centimeters. That is

1 a little bit under an inch in length. And so those four hairs
2 met that requirement.

3 Q Did the lab also receive saliva samples from individuals
4 named Kevin McMahon and Charles Carneglia?

5 A Yes, we did.

6 Q Were unique identifying numbers assigned to those
7 samples?

8 A Yes, they were.

9 Q What were those numbers?

10 A For Kevin McMahon, the unique identifier was FB 90 -- I'm
11 sorry, it was FB 08-S as in Sam, 0510 and for Charles
12 Carneglia, the lab number was FB 08-S0572.

13 Q You testified before that mitochondrial DNA analysis is
14 useful on hair shafts. Can you also extract nuclear DNA from
15 a hair?

16 A You can when there is a hair root present or cells that
17 are attached to the hair at that end.

18 Q Prior to conducting mitochondrial DNA analysis on the
19 hairs, did the lab examine the hairs to determine whether
20 nuclear DNA typing would be feasible?

21 A Yes, out of those four hairs that we tested, three of
22 them we noted may have a possible root. So those three were
23 first sent for -- to see whether there was nuclear DNA
24 present.

25 Q Was there nuclear DNA present?

1 A There was not.

2 Q After the lab determined that was there was no nuclear
3 DNA present, did it proceed to conduct mitochondrial DNA
4 analysis on all four hairs?

5 A That's correct.

6 Q And did the lab conduct linear array testing on the
7 hairs?

8 A Yes, we did.

9 Q What were the results of the linear array testing?

10 A The result of the linear array testing was that we were
11 able to develop linear DNA profiles, mitochondrial profiles
12 for three of those four hairs, for 1A-1, 1A-2 and item 1B-1.
13 For the fourth hair, item 1A-4, we did not have enough DNA for
14 linear array typing.

15 For the first two items, 1A-1 and 1A-2, we obtained
16 a linear array profile that was the same. And for the third
17 sample, 1B-1, we obtained another linear array profile.

18 Q After conducting the linear array tests, did you conduct
19 DNA sequencing?

20 A Yes, we did.

21 Q What were the results of the DNA sequence testing?

22 A The results were the same as for the linear array testing
23 where we determined the DNA sequence for items 1A-1, 1A-2 and
24 the DNA sequence profiles were the same. And then we also
25 developed a profile for item 1B-1 and that DNA sequence was

1 different.

2 Q Did the lab also conduct mitochondrial DNA testing on the
3 saliva samples received from Charles Carneglia and Kevin
4 McMahon?

5 A Yes, we did.

6 Q Did the lab compare the profiles to determine from
7 Charles Carneglia and Kevin McMahon what the profiles
8 determined from the hair samples, from the three hair samples?

9 A Yes, we did.

10 Q What were the results for Charles Carneglia?

11 A The results were that the mitochondrial DNA profile
12 developed for Charles Carneglia was different from the
13 mitochondrial DNA profiles developed for all three hairs.

14 Q What were the results for Kevin McMahon?

15 A For Kevin McMahon, the results were that the
16 mitochondrial DNA profile developed for the first second
17 items, the first two hairs that I had mentioned, 1A-1 and
18 1A-2, were the same profile as that of Kevin McMahon.

19 Q Therefore, the mitochondrial DNA profile for two of the
20 hairs is the same as the mitochondrial DNA profile of Kevin
21 McMahon?

22 A That's correct.

23 Q Given that the profiles are the same, can you determine
24 how often this profile appears in the general population?

25 A Yes.

1 Q How do you do that?

2 A We use statistical methods that are standard in the
3 mitochondrial DNA forensic community. And essentially what we
4 do is we use a database that has been compiled by the FBI and
5 we ask whether -- how many times that given profile, in this
6 case the one that is in common between Kevin McMahon and those
7 two hairs, how many times does it occur in the database. And
8 based on that, we're able to get an idea of how frequently you
9 would find that particular mitochondrial DNA profile in the
10 general population.

11 Q In this case, how often would you expect to find this
12 mitochondrial DNA profile in the general population?

13 A In this case, our conservative estimates are as follows:
14 .65 percent.

15 Q .65 percent in what racial type?

16 A In Caucasian.

17 Let me read you all four groupings. We expect to
18 find this profile: .26 percent in African Americans,
19 .65 percent in Caucasians, .44 percent in Hispanics and
20 .35 percent in Asians.

21 Q So is it fair to say that the mitochondrial DNA profile
22 for Kevin McMahon and the hairs that were found in the hat
23 occur in less than 1 percent of the population?

24 A Yes.

25 Q To be a bit more specific, for Caucasians, which is the

1 greatest frequency out of all the groups, this profile would
2 be found in about one in every 150 people?

3 A That is correct.

4 Q Just to take an example, when you flip a coin heads and
5 tails, what is the chance that you flip a heads or tails at
6 any given time?

7 A The chance would be one out of two or 50 percent.

8 Q If the origin of the hair was from someone other than
9 Kevin McMahon who just happens to share Kevin McMahon's
10 mitochondrial DNA profile, would that be equivalent to
11 flipping a 150 sided coin and having it land on a particular
12 side?

13 A Let me just rephrase that.

14 The answer is yes in -- but let me just rephrase it
15 as such.

16 To be able to by random chance to obtain a profile
17 that we did in this case that is the same as Kevin McMahon's,
18 by chance you -- it's comparable to flipping a 150 sided coin
19 where that profile is only on one of those sides and have it
20 fall on that particular profile.

21 MR. NORRIS: Thank you.

22 No further questions.

23 (Continued on next page.)
24
25

1 CROSS-EXAMINATION

2 BY MS. SHARKEY:

3 Q Hi. How are you?

4 A Fine.

5 And you?

6 Q Fine.

7 Now, Dr. Goncharoff, I want to go back a little bit.

8 The office of the chief medical examiner for the
9 City of New York is an office that does numerous types of
10 testing; is that correct?

11 A That is correct.

12 Q And you are involved in one department of that office; is
13 that correct?

14 A We are all in the same department, but I am involved in a
15 specialty group that does mitochondrial DNA testing, in
16 addition to some nuclear DNA testing. But our specialty is
17 mitochondrial DNA testing.

18 Q So you are experienced in nuclear DNA testing; right?

19 A Yes, I am.

20 Q And you know that nuclear DNA testing was done in regard
21 to this case; correct?

22 A That is correct.

23 Q And that was by your colleague, Katey Nori; right?

24 A That is correct.

25 Q Now, just to back up between the difference between

1 mitochondrial and nuclear.

2 When nuclear DNA testing is performed, you are able
3 to get what scientists call a unique identifier; is that
4 right?

5 A In our laboratory we provide statistics for that, and
6 some laboratories will actually say that it is a unique match.
7 We provide statistics to show to what degree of scientific
8 certainty is a match.

9 Q And you would agree with they me that when there is a
10 nuclear DNA match, you can say with great, if not complete,
11 certainty that the item tested matches the person against whom
12 it is compared; is that right?

13 A It depends on how many regions of the DNA is tested, but
14 given our standard testing I would agree with that.

15 Q Okay. And that is not true were mitochondrial DNA
16 testing; correct?

17 A No. The statistics usually for mitochondrial DNA testing
18 is different -- is lower than -- or I should say -- like I
19 said earlier, not as discriminating as nuclear DNA testing.

20 Q And, Doctor, when you say not as discriminating, what you
21 actually can do is include the profile or exclude it.

22 Does that make sense? Is that phrased correctly in
23 scientific lingo?

24 A Well, our -- the way we present the data is if there is
25 a match or if there is the same profile, like we had in this

1 case, we say that we cannot exclude pairs as originating
2 from -- from the reference sample, which in this case is
3 Kevin McMahon.

4 Q And, in fact, when you use mito testing, you would never
5 say there is a match; isn't that correct? You would never use
6 the term a match?

7 A Well, when I am talking about -- when we are talking
8 about are these profiles the same? Yes. As far as our
9 conclusions go? No. We have -- our wording is like I had
10 mentioned; that we cannot exclude.

11 Q Okay. Now, I want to talk about DNA a little bit in
12 general with you.

13 First of all DNA is -- can be left on an item by
14 a person's body; is that right?

15 A Yes.

16 Q And that takes many different forms; is that correct?

17 A Can you clarify your question?

18 Q Sure.

19 DNA can be found from someone's spit, skin, blood,
20 skin cells, hair; is that right?

21 A That is correct.

22 Q And it is not always true to say that because someone
23 comes in contact with an object that they leave a DNA sample;
24 is that right?

25 A It can certainly vary on conditions.

1 Q So, for example, one may wear a hat and leave a DNA
2 sample or may not; is that correct?

3 A It -- it depends. It can -- it is depending on the
4 conditions.

5 Q Now, in the context of this case, are you familiar with
6 the entire DNA file?

7 A By entire, what do you mean?

8 Q The nuclear and the mito testing?

9 A I am familiar with mitochondrial DNA testing. As far as
10 nuclear DNA testing I am aware of the reports, but I did not
11 go into -- look at that file in detail.

12 Q You are aware though, and tell me if you are not, that
13 Dr. Nori tested for the nuclear testing from scrapings that
14 were recovered inside this blue hat that you testified about
15 on direct examination; is that right?

16 A Yes. I am aware of that.

17 Q And you are aware also from your review of the reports
18 that she was not able to develop a nuclear profile from the
19 scrapings inside that hat; is that right?

20 A I am aware that the result was a mixture of DNA, where
21 a unique profile or one -- a single profile could not be
22 developed.

23 Q And there were actually two spots on the hat from which
24 DNA was sampled; is that right?

25 A I am not really sure about the details of that. You will

1 have to question Katey Nori more about that.

2 Q Did Katey Nori come with you today?

3 A Yes. She is here.

4 Q Fair enough. I will ask Ms. Nori those questions.

5 Now, let's talk about the mito then.

6 You didn't actually do the testing about which you
7 are testifying; is that correct?

8 A Personally with my own hands? No. However, I -- it was
9 done by an analyst who I had supervised, and results that were
10 generated, I -- my name is on the review of the -- a lot of
11 the tests, as well as I have reviewed all of the results in
12 the files.

13 Q Right.

14 But it was someone else who works with you or works
15 under you that did the actual testing; is that correct?

16 A That is correct.

17 Q And it would also be accurate to say that from the mito
18 testing you can definitely exclude Charles Carneglia as the
19 donor of the hairs that were found; right?

20 A That is correct.

21 Q Absolutely it is not Charles Carneglia; right?

22 A It is not Charles Carneglia's heirs.

23 Q And it would also be accurate to say that you can't
24 exclude Kevin McMahon.

25 A Can you repeat that?

1 Q Yes.

2 You can exclude Carneglia; it is not Carneglia's
3 hair; is that right?

4 A That is correct.

5 Q But you can't exclude McMahon?

6 A That is correct.

7 Q And you just talk about the statistics with Ms. Seifan.
8 And you testified that based on your testing you concluded
9 that there is a one in a 150 chance that the hair that was
10 tested and the profile that was developed could be McMahon; is
11 that right?

12 A That is correct.

13 Q And what that means in the context of this sample in a
14 community the size of New York, where there is approximately
15 8 million people, it means about 53,000 people could be the
16 donor of that hair; is that right?

17 A If 53,000 people, if that is the number of
18 one-one-fiftieth of the population of New York City, then
19 that would be correct.

20 Q And so --

21 THE COURT: Excuse me. Are you restricting that to
22 Caucasians in that ratio.

23 THE WITNESS: Yes.

24 THE COURT: Should you in developing a ratio?

25 THE WITNESS: That is based on -- the one in 150 is

1 the most conservative number out of the four groups. That is
2 why we're -- we are going with that. And so that is our
3 conservative estimate for all groups.

4 THE COURT: All groups together, not Caucasians?

5 THE WITNESS: Right. The general population.

6 THE COURT: So the 8 million figure would be
7 correct?

8 THE WITNESS: Yes.

9 THE COURT: Thank you.

10 MS. SHARKEY: Thank you.

11 BY MS. SHARKEY:

12 Q And it would also be accurate to say that you can't
13 narrow it down any further; is that right? With mito testing?

14 A That -- that is what we -- that was our result.

15 Q So for this sample for this hat in a community the size
16 of New York, 8 million people, 53,000 people could be the
17 donor of that sample; is that right?

18 A 53,000 people could have that same profile; that is
19 correct.

20 MS. SHARKEY: Thank you very much.

21 MS. SEIFAN: I have no further questions.

22 THE COURT: Thank you, Doctor.

23 (Witness excused.)

24 MS. SEIFAN: I call Katey Nori.

25 (Witness sworn.)

1 THE WITNESS: I do.

2 LAW CLERK: Please be seated and state and spell
3 your full name.

4 THE WITNESS: My name is Katey Nori, K-a-t-e-y
5 N-o-r-i.

6 K A T E Y N O R I

7 called as a witness, having been first
8 duly sworn, was examined and testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. SEIFAN:

12 Q Good afternoon, Ms. Nori.

13 A Good afternoon.

14 Q Where are you employed?

15 A I am employed for the New York City Office of the Chief
16 Medical Examiner.

17 Q Do you work in a particular department?

18 A I do. I work in the Department of Forensic Biology.

19 Q And how long you been employed with the Office of the
20 Chief Medical Examiner?

21 A Approximately three and a half years.

22 Q And what is the current position?

23 A I am a Criminalist, Level III.

24 Q What are the duties as a Criminalist, Level III?

25 A A Criminalist, Level III, is a first-level supervisor in

1 this department. With this title my duties are that I
2 supervise Criminalist, Level I, and the duties that they
3 perform on a day-to-day basis, as well as I examine evidence.
4 I do DNA typing. I interpret the results, write reports on
5 the results, and then I will testify in court if called upon.

6 Q What is the field of forensic science?

7 A Forensic science is application of natural sciences, such
8 as biology and chemistry, to matters of the law.

9 Q And what is the field of forensic biology?

10 A Forensic biology is a subset of forensic science, and it
11 uses two stages. The first, you use identification to try and
12 find biological material, such as blood, semen, saliva, or
13 skin cells. After you identify that, you try to individualize
14 it by using DNA testing and putting a person to that sample.

15 Q Ms. Nori, what is your educational background?

16 A I have a biology degree from LaSalle University, as well
17 as a masters degree in forensic science from Arcadia
18 University.

19 Q And do certain courses you took apply to your current
20 position?

21 A Yes. It is required that I have taken molecular biology,
22 biochemistry, genetics, and statistics. I also took many
23 courses in the field of forensic science.

24 Q What kind of training, if any, have you received by the
25 Office of the Chief Medical Examiner?

1 A When you first come into the laboratory you undergo a
2 six-month intense training period. In this training period
3 you need to learn or became competent in every technique that
4 is used in the laboratory. The phases which you go through
5 are that, one, you watch an experience analyst who is
6 competent in that technique perform the task. They then watch
7 you perform it under the supervision, and then you perform
8 what is known as a competency test. This competency test is
9 unknown examples to you, known to your direct supervisor. You
10 perform it as you would on a day-to-day basis as if you were
11 using evidentiary samples, and then your results must be
12 checked before you are deemed competent in each technique.

13 You then undergo an oral examination at the end of
14 this in the scientific access and background of every
15 technique. And then as you to along you receive additional
16 training based upon your level and group.

17 Q Approximately how many cases have you worked on?

18 A Thousands.

19 Q Approximately how many examinations have you conducted?

20 A Thousands.

21 Q Have you ever testified in court or given your opinion in
22 the field of forensic biology or DNA analysis?

23 A I have.

24 Q How many times?

25 A Once in a trial in Manhattan and several times in many

1 other boroughs in Grand Jury.

2 MS. SEIFAN: Your Honor, at this time pursuant to
3 Rule 702, may this witness give her opinion in the area of
4 forensic biology and DNA analysis?

5 THE COURT: Yes.

6 BY MS. SEIFAN:

7 Q Ms. Nori, what is nuclear DNA?

8 A DNA is the genetic material that makes up what we are.
9 We get half of our DNA from our mother and we get the other
10 half from our father. Some of our DNA is the same. For
11 instance, we all have DNA that says that we should have two
12 eyes, a nose, and a mouth.

13 But some of our DNA is different. For instance, my
14 DNA says that I should have brown hair, while others would say
15 they should have blonde hair. Some say blue eyes and some say
16 brown eyes and so on. There is a small percentage of our DNA
17 that is different, and this is the area, as forensic
18 scientists when we're doing the DNA testing, that we are
19 looking at.

20 Q Could you explain in simple terms for the jury the basic
21 process of nuclear DNA testing.

22 A The first step is that you are going to examine a piece
23 of evidence. You are going to be looking for biological
24 material, blood, semen, saliva, or in some cases looking for a
25 wearer or someone who touched something, which we would call

1 skin cells. We then -- after that there are four basic steps
2 once that is identified. The first step is what we call
3 extraction. And this is that we are going to break open the
4 cell because the nucleus is in the very center of the cell.
5 So if you had an egg, the nucleus is the yolk. So we need to
6 break it open with chemicals and heat and take out that DNA.

7 The next step that you want to do is you want to
8 find out how much DNA you have. So this is called
9 quantitation. And this is a numeric number to how much DNA is
10 present in that sample. After you know this number, you can
11 then do the next step, which is called amplification, and this
12 is making many, many, many copies of the DNA that you want to
13 test. You run it through an instrument, and then this last
14 step will generate a strand of numbers, which is essentially
15 a DNA profile.

16 Q Did the forensic biology lab receive evidence relating to
17 a case involving a victim named José Delgado Rivera?

18 A Yes.

19 Q Did the lab assign any identifying number to that case?

20 A Yes.

21 Q What was that number?

22 A It was FB, as forensic biology; 90, for the year 1990;
23 2450. For the 2,450th case of that year.

24 Q What piece of evidence was nuclear DNA conducted on --
25 nuclear DNA testing tested on?

1 THE WITNESS: May I refer to my file?

2 THE COURT: You may.

3 THE WITNESS: The nuclear DNA testing was performed
4 on a blue American Airlines hat.

5 BY MS. SEIFAN:

6 Q I am showing you what is already in evidence as
7 Government's Exhibit 115.

8 Do you recognize this item?

9 A Yes.

10 Q Is that the hat that the lab received in conducting the
11 DNA testing on?

12 A Yes, it is.

13 Q And how do you know that?

14 A When we receive a piece of evidence, the person who is
15 examining it puts their initials, the case number, and
16 association -- associated itemization number that we assign,
17 as well as the date that the testing was performed. And in
18 this case the initials are there of KB, which is Karine Belt,
19 who is another criminalist in our laboratory who performed the
20 actual exam of the hat, as well as the case information.

21 Q When did the lab receive that hat, do you recall?

22 A It was received on March 7th of 2008.

23 Q And when was the hat examined?

24 A On March 28th, 2008.

25 Q Please tell the jury what the lab did after receiving of

1 the hat?

2 A Once the case is assigned that unique identifying number,
3 we then have to go and retrieve the evidence from our evidence
4 unit, where it is stored, and that is where the chain of
5 custody is started. And the chain of custody the logging of
6 the signatures of people who exchange the evidence. After
7 that is signed, the evidence is then received by the analyst
8 and the documentation process takes place.

9 The first step is to document the packaging, exactly
10 how it was received, and the information on the outside to the
11 associated paperwork, checking to make sure that it is the
12 exact piece of evidence that is set to be tested. We then put
13 our identifying marks on the packaging and open it for
14 examination.

15 We then document in full the contents that are in
16 the packaging; in this case it was the American Airlines hat,
17 and we start looking for biological stains, such as blood or
18 semen, which we are trained to do. We also -- in this case we
19 were looking for the wearer of the hat or any contact of
20 someone who would have come in contact with the hat, which is
21 then touch DNA, epithelial cells, or skin cells.

22 In this case they took the hat, and they did a
23 scraping of the inside. When you put a hat on, your -- the
24 most contact is going to be on the forehead area and sweat and
25 skin cells or small balls. The other area that was scraped

1 was the rim of the hat.

2 Q Ms. Nori, can you -- I think it would be helpful for the
3 jury if you took the hat out and showed them exactly where the
4 scraping occurred.

5 (Whereupon, the witness, Ms. Nori, puts on some
6 gloves.)

7 THE WITNESS: So the inside circumference was
8 scraped, as well as the brim, the top, and bottom.

9 BY MS. SEIFAN:

10 Q Thank you.

11 So what happened next?

12 A So after the sampling took place it was sent through the
13 basic process, which I previously explained, of the
14 extraction, quantification, amplification, and STR analysis.
15 When this first occurred, no results were able to be produced.
16 That is why they came to the high-sensitivity group, to see if
17 any further testing could be done to achieve a DNA profile.

18 Q What is -- can you briefly explain what high sensitivity
19 means.

20 A High sensitivity in our department is another specialized
21 area and group within the Department of Forensic Biology. It
22 basically means that we take samples, which either previously
23 did not -- were unable to produce results or samples that had
24 very small amounts of DNA, and we apply the same traditional
25 methods of testing, but we just do a little bit more sensitive

1 testing to try and produce a DNA profile.

2 Q And you are in that group?

3 A Yes.

4 Q What was sent over to the high-sensitivity group for
5 analysis?

6 A It was the extracts that were produced in the first stage
7 of the DNA testing extraction that were sent to us for further
8 testing.

9 Q What did you do?

10 A It went through the -- it went through the process that
11 we do to try to make a DNA profile, and we were able to
12 generate DNA results in this case.

13 Q And what were your results?

14 A On the scraping of the brim of the hat it generated a
15 mixture of DNA from at least three people. On the scraping of
16 the inside of the hat it generated a mixture of DNA of at
17 least two people.

18 Q So is it fair to say that at least three people came into
19 contact with that hat?

20 A Yes.

21 Q Just to be clear, you found DNA on the brim and the
22 inside of the hat?

23 A Yes.

24 Q Do you have any known samples with which you could
25 compare the DNA found on the hat?

1 A Yes.

2 Q What samples did you have?

3 A We received a sample from José Delgado Rivera.

4 Q Did you make a comparison?

5 A We did.

6 Q And what were the result of that comparison?

7 A That -- to go through the mixtures, he was excluded as
8 being a contributor to that mixture.

9 Q Did there come a time when you received samples from
10 other individuals?

11 A Yes.

12 Q Who were those individuals?

13 A They were Charles Carneglia and Kevin McMahon.

14 Q And what kind of samples did you receive from those
15 individuals?

16 A They were oral swabs, which are swabbings of the inside
17 check, and they contained skin cells.

18 Q Were you -- were those samples assigned unique
19 identifying numbers?

20 A Yes.

21 Q What were those numbers?

22 A For Charles Carneglia it was FB08-S0572; and for
23 Kevin McMahon it was FB08-S0510.

24 Q Did you compare the sample that you received from
25 Charles Carneglia with the sample that you received from the

1 hat?

2 A Yes.

3 Q What was your conclusion?

4 A That he was excluded as being a contributor to both of
5 the samples.

6 Q Did you compare the sample that you received from
7 Kevin McMahon with the sample that you received from the hat?

8 A Yes.

9 Q What was your conclusion in that case?

10 A In this case I was unable to draw any conclusions to
11 whether he was a contributor to either one of those mixtures.

12 Q What does that mean?

13 A Based on the results that the samples themselves
14 generated, we were unable to come to a definitive conclusion
15 to whether or not his DNA was present.

16 MS. SEIFAN: I have no further questions.

17 Thank you.

18 CROSS-EXAMINATION

19 BY MS. SHARKEY:

20 Q Good afternoon, Ms. Nori.

21 A Good afternoon.

22 Q When an individual comes in contact with a surface, in
23 this case a hat, DNA is not always present; correct?

24 A That is correct.

25 Q And you testified on direct examination that you were

1 able -- or your lab was able to recover two scrapings from the
2 hat which yielded DNA results; is that right?

3 A Yes.

4 Q The two venues -- the two areas on the hat from which DNA
5 was able to be taken from, you said one was the brim and one
6 was inside?

7 A Yes.

8 Q And you said in scraping the brim three people were
9 contributors; is that right?

10 A On the brim, yes.

11 Q And inside the hat two people were contributors; right?

12 A At least two people.

13 Q And were there any similarities between those two
14 mixtures?

15 A We did not do comparisons between the mixture to mixture
16 of evidentiary samples. We do -- we did the comparison of
17 knowns within those mixtures.

18 Q Okay. What does that mean? I am sorry to ask you that.
19 Forgive me.

20 A It means that there were two samples taken from the hat,
21 and they both produced separate results because they were both
22 typed separately.

23 Q Okay.

24 A One was a mixture of at least three people, and one was
25 a mixture of at least two people. Because there are many

1 contributors to the samples and not being able to know what --
2 who those contributors are, those two were not directly
3 compared to each other.

4 For instance, we had the sample of José Rivera
5 Delgado -- or Delgado Rivera to compare it to, which we then
6 did, and that is how we were able to say he was excluded as a
7 contributor to those mixtures, as an example.

8 Q Okay. Thank you.

9 A Uh-huh.

10 Q Now, when Ms. Seifan asked you, you said there were at
11 least three persons whose body or skin had come in contact
12 with that hat; right?

13 A There was at least three contributors that we detected
14 off of that one sample.

15 Q It could have been five; right?

16 A It was at least three.

17 Q Well, when you say at least three, you know that the most
18 samples that you have are three from one section; is that
19 right?

20 A It means that the minimum amount of people who would have
21 touched that -- in that -- were detected in that sample were
22 three.

23 Q Right.

24 And in another sample there were two?

25 A At least two.

1 Q So you didn't compare the three to the two is what you
2 are telling us; is that right?

3 A That is correct.

4 Q So you know that at least three different people had that
5 hat on, but it certainly could have been more.

6 You just don't know; right?

7 A I know that at least three people were detected. I don't
8 know if they had it on.

9 Q Okay. That is fair enough.

10 But you know at least three people were detected.
11 You don't know how many people had that hat on?

12 A That is correct.

13 Q And it would also be fair to say that there is no way
14 that you can tell when a tested sample is deposited; is that
15 right?

16 A If I understand correctly, there is no way to say when
17 the DNA was left that I detected.

18 Q And that would be true also for mito testing; is that
19 correct?

20 A I believe so. I am not familiar with mitochondrial
21 testing.

22 Q Okay. You -- I referred to you earlier as doctor.

23 Are you going for your Ph.D.?

24 A I'm sorry. No. I didn't -- you shouldn't call me a
25 doctor.

1 Q Earlier I referred to you as Dr. Nori.

2 A No.

3 Q But you have been tested -- you have been trained in a
4 lot of areas in the lab; right?

5 A I -- I have my educational degree in forensic science,
6 which is a masters degree, but when you come into a
7 laboratory, you are trained in the nuclear DNA testing. And
8 then if you go into any specialized group, such as
9 mitochondrial, or high sensitivity, as myself, additional
10 training is required. And I have only undergone the
11 high-sensitivity training.

12 Q Fair enough.

13 But you know from your educational background,
14 right, from your other training that you have received that
15 you can't tell what date the DNA was deposited on a sample; is
16 that right?

17 A Yes.

18 MS. SHARKEY: All right. Thank you very much.

19 And I meant the doctor as a compliment.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you.

22 That will be all.)

23 (Witness excused.)

24 MS. SEIFAN: Can we take a short break now?

25 THE COURT: Take a short break.

1 (Whereupon, the jury leaves the Courtroom at
2 2:35 p.m.)

3 THE COURT: I don't recall evidence connecting the
4 particular test to the scene of the crime.

5 Who is going to do that?

6 MS. SEIFAN: We are having a witness come on Monday.
7 He wasn't available today.

8 THE COURT: Okay. Thank you.

9 MR. BURLINGAME: Judge, just to alert you, we
10 have -- we lost a witness who had to go to the hospital this
11 morning. We are having problems with another witness; so we
12 only have two witnesses left. They are our seventh and eighth
13 witnesses of the day, and we expect that we will go about
14 another 30 or 45 minutes, and that is all that we've got.

15 THE COURT: All right. You will have to announce
16 that. It sounds like you are trying to cultivate the jury by
17 having short days. I am sure that is not your purpose. You
18 are not cultivating me by having short days.

19 All right. Thank you.

20 Ten minutes.

21 (Recess taken at 2:37 p.m.)

22 (Matter continued on the next page.)

23

24

25

1 THE COURT: Bring in the jurors. Can we have the
2 next witness?

3 MR. BURLINGAME: I call Arthur Larsen.

4 (Whereupon the jury enters the courtroom at 2:55
5 p.m.)

6 THE COURT: Please be seated.

7 Swear the witness.

8 LAW CLERK: Please raise your right hand.

9 (Witness sworn by the law clerk.)

10 THE WITNESS: Yes, I do.

11 A R T H U R L A R S E N,

12 called as a witness, having been first
13 duly sworn, was examined and testified
14 as follows:

15 LAW CLERK: Please be seated, and state and spell
16 your name for the record.

17 THE WITNESS: Arthur Larsen, L-A-R-S-E-N.

18 MR. BURLINGAME: May I inquire, Judge?

19 THE COURT: Yes.

20 DIRECT EXAMINATION

21 BY MR. BURLINGAME:

22 Q Good afternoon, sir.

23 A Good afternoon.

24 Q Where do you work?

25 A Brooklyn district attorney's office.

1 Q How long have you worked at the Brooklyn District
2 Attorney's Office?

3 A Over 18 years.

4 Q What do you do there?

5 A I'm a senior first grade detective.

6 Q What is your day-to-day assignment?

7 A Basically, I operate an intelligence room.

8 Q What sort of intelligence? Is that gathering
9 intelligence?

10 A That's affirmative. I gather intelligence for the
11 office.

12 Q What do you gather intelligence about?

13 A Various things, but mostly on traditional organized
14 crime.

15 Q When you say traditional organized crime what are you
16 talking about?

17 A Well, traditional organized crime is usually the five
18 families that are associated with the city.

19 Q The five families of La Costa Nostra?

20 A Yes.

21 Q What did you do before you were at the Brooklyn district
22 attorney's office?

23 A A short span of time I was a director of a college,
24 safety and security.

25 Q Before that?

1 A I spent most of my career as a detective in the New York
2 City Police Department.

3 Q What were your assignments in the New York City Police
4 Department?

5 A I was a uniform cop for a short span, and then I was
6 brought in to be an investigator detective. And I worked in
7 the intelligence division.

8 Q What sort of intelligence were you gathering there?

9 A Traditional organized crime.

10 Q The same thing, the five families?

11 A The five families of mafia.

12 Q What years were you in the intelligence division
13 gathering information about the Mafia?

14 A Let's see. Probably from around '76 to '80. And then I
15 got reassigned for a short span of time. And back from around
16 '84 to when I retired in '87.

17 Q Is it fair to say you spent about 25 years gathering
18 intelligence on organized crime?

19 A It is fair to say, yes.

20 Q Have you conducted surveillance during that time?

21 A Yes, I did.

22 Q What is the purpose of conducting surveillance of
23 organized crime?

24 A Well, to see individuals, who they meet, locations they
25 go to, maybe what businesses they're involved in.

1 Q What sorts of things do you conduct surveillance of?

2 A People, locations, businesses.

3 Q Did you ever surveil events?

4 A Yes, I did.

5 Q What sorts of events?

6 A Wakes, weddings.

7 Q Why would you conduct surveillance of wakes and weddings?

8 A For the same reason, to see who shows up at these
9 particular events.

10 Q When you conduct surveillance, generally, what sort of
11 equipment would you have there.

12 A Well, you can use a car, you can use a surveillance van.
13 Depending, you use pictures, videos. Or just your own
14 eyesight and record names and plates.

15 Q Did you conduct surveillance of the wake of John
16 Borrello?

17 A Yes, I did.

18 Q Did you take notes of your surveillance that day?

19 A We recorded plate numbers that day. Or names of people
20 that we thought might be at the location.

21 Q Was that turned into a report?

22 A Yes, it was.

23 Q Do you have that report with you?

24 A I have a copy.

25 Q Okay.

1 MR. BURLINGAME: Judge, I ask that the witness be
2 allowed to refer to his report as needed to refresh his
3 recollection.

4 THE COURT: Granted.

5 BY MR. BURLINGAME:

6 Q Can you tell us what the date of John Borrello's wake
7 was?

8 A Just one second. Let me get my glasses. The date in
9 question was Thursday, October 10th, 1996, and Friday, October
10 11th, 1996, between the hours of 1400 to 1700 and 1900 to
11 2200.

12 Q Where did that wake take place?

13 A At a funeral home on Rockaway Boulevard, James Romanelli.

14 Q Were you able to identify any people that day?

15 A Yes, we did.

16 Q Were you able to take any video that day?

17 A Yes, I did.

18 Q I'm showing you what has been marked as Government
19 Exhibit 320. I'd ask you to take a look at that?

20 A Those are my initials on it.

21 Q Have you watched this video?

22 A Yes, I have.

23 Q Fair to say you know this is a video you watched because
24 you put your initials after watching it?

25 A Yes.

1 Q What is it a video of?

2 A The wake of John Borello.

3 MR. BURLINGAME: I move to admit Government Exhibit
4 320.

5 THE COURT: Admitted.

6 (So marked as Government Exhibit 320 in evidence.)

7 BY MR. BURLINGAME:

8 Q Who appears in the clip of the wake of John Borello?

9 A In that clip you see Joseph Panzarella and Charles
10 Carneglia.

11 MR. BURLINGAME: Permission to publish Government
12 Exhibit 320.

13 THE COURT: Granted.

14 MR. BURLINGAME: Permission for the witness to step
15 down in the beginning of the video and show who is who?

16 THE COURT: Yes.

17 BY MR. BURLINGAME:

18 Q Before it pops up, can you identify what we're about to
19 see?

20 A The individuals at the front entrance of the funeral home
21 going in or going out, depending which way they're going,
22 you'll see people talking to each other.

23 Q Is that typical, that you would train the video camera on
24 the front entrance?

25 A Yes. Especially when you know there's only one entrance.

1 Q Did you know that on this occasion?

2 A I believe so. It was the only entrance, and whoever went
3 in and came out we would have them on video.

4 (Whereupon the video was played.)

5 A One minute?

6 (Whereupon the video was paused.)

7 Q Sure.

8 A This is Mr. Charles Carneglia. This is Joseph
9 Panzarella. I don't know who this is right now. This is
10 Charles and this is Joseph. They're both having a
11 conversation, as you can see. (Indicating.)

12 Q Joseph Panzarella, Senior or Junior?

13 A That is Junior, I believe.

14 (Whereupon the video is played.)

15 A That is Charles in a conversation with -- right here
16 (indicating).

17 Q If you could stay to the side so the jury can see.

18 A I'm sorry.

19 As you can see, they're all in deep conversation.
20 This is a normal thing at a wake or wedding. That is Charles
21 talking to Joseph, I believe, right there in the black
22 (indicating). I really can't tell who you this is at this
23 time.

24 Q That that's the defendant who's talking?

25 A That's affirmative. He's giving instruction to someone.

1 MR. FARBER: Objection to the characterization.

2 THE COURT: I will allow it.

3 BY MR. BURLINGAME:

4 Q I notice there's no audio. Why is that?

5 A Normally we don't use audio.

6 Now they're walking away and coming down the steps.

7 Q Who is -- who in this shot?

8 A This is Charles over here. There is Joseph over here,
9 Panzarella. (Indicating.)

10 I'm sorry. I can't ID the other people at this
11 time.

12 Q Joseph Panzarella, in the clips he's the one with the
13 light colored suit?

14 A Yes.

15 Q Just explain why no audio. Why wouldn't you guys use
16 audio?

17 A That's a good question. I think there's too much
18 interference from the outside world.

19 Q How far away are when you're taking these pictures?

20 A At this time, I'm across the street down the block. And
21 using a zoom on the video truck.

22 Q Fair to say if you had a microphone on the outside of the
23 truck, you're not getting anything?

24 A I can pick up sounds from outside the truck, but not that
25 distance away.

1 (Whereupon the audio is stopped.)

2 MR. BURLINGAME: Let me check my notes. I have
3 nothing further.

4 MR. FARBER: No questions.

5 THE COURT: Thank you, sir.

6 THE WITNESS: Thank you.

7 (Whereupon the witness is excused.)

8 THE COURT: Next witness.

9 MR. BURLINGAME: The government calls Robert Booth.

10 LAW CLERK: Please stand and raise your right hand.

11 (Witness sworn by the law clerk.)

12 THE WITNESS: I do.

13 R O B E R T B. B O O T H,

14 called as a witness, having been first

15 duly sworn, was examined and testified

16 as follows:

17 LAW CLERK: Please be seated, and state and spell
18 your name for the record.

19 THE WITNESS: Robert B. Booth, B-O-O-T-H. Currently
20 a Special Agent with the FBI in New York office.

21 DIRECT EXAMINATION

22 BY MR. BURLINGAME:

23 Q Good afternoon, Special Agent Booth.

24 You stole my first question. What's your current
25 assignment within the FBI?

1 A I'm currently assigned to the counter intelligence
2 division in New York.

3 Q What does that mean?

4 A We evaluate different threats in the Metropolitan area in
5 New York.

6 Q How long have you been doing counter intelligence?

7 A For the past five years.

8 Q What was your prior assignment?

9 A Prior assigned to the violent crime division in New York.
10 I worked there for approximately five years, five to six
11 years.

12 Q What did you do in violent crimes?

13 A Basically investigate home invasion robberies, different
14 criminal theft groups around the Metropolitan area.

15 Q Before that?

16 A Before that I was assigned to the special operation
17 division, which handled mostly surveillance on different cases
18 in the New York office.

19 Q Were in the special operations unit were you assigned to,
20 any particular squad?

21 A Yes. A squad that I was assigned to was S0-3 which
22 stands for special operations three. On that squad we -- most
23 of the surveillances were conducted against organized crime
24 individuals in the New York area.

25 Q What sorts of surveillance would the S0-3 squad conduct?

1 A Mostly organized crime individuals in the New York area.

2 Q Take me through a typical day in the S0-3 squad?

3 A We get assigned a particular target, that would come
4 through the main office. We would, basically, document the
5 individual's location that he stopped at during the day and
6 document any individuals that he would meet.

7 Q How many people were on S0-3?

8 A We had a group of 12 to 50 agents. It varied from
9 time-to-time. And teams were made up of approximately seven
10 individuals.

11 Q How would a team conduct surveillance during the day?

12 A We would have five to seven individuals assigned to that
13 day, and we would start at the individual's normal residence
14 or business, depending on what time during the day we were
15 conducting the surveillance. And we would -- again, we
16 document their activities for the day and who they met with.

17 Q Why do you need a team of five to seven people?

18 A Well, it's for not to get seen when you conduct a
19 surveillance. The more people that you have surveilling you
20 have somebody, the better not to be exposed.

21 Q How is that? Why?

22 A Most of the individuals that we follow are looking for
23 us. They conduct their counter surveillance, and we have to
24 been very careful not to be caught.

25 Q It's easier to do it with more people?

1 A Yes.

2 Q How does that work?

3 A Well, one person isn't exposed to that long of a time
4 period watching an individual. We constantly rotate people to
5 not be seen or to be seen by the individual.

6 Q What certain equipment would the team members have?

7 A Basically binoculars, a camera with a telescopic, a video
8 camera.

9 Q Would everybody have different vehicles?

10 A Yes, everybody would be driving a different type vehicle.

11 Q Now, you said that you document what you saw. What kind
12 of things do you document?

13 A We document where the individual went and possibly who
14 the individual met with.

15 Q Would you take notes the day it's going on?

16 A There's one individual on the team that keeps a written
17 log of the day's activity.

18 Q You said that you take steps to avoid detection. What
19 sort of steps do you take?

20 A Well, it depends on the individual that we're following.
21 Sometimes the person we're following would drive very slow on
22 the highway. So we constantly have to change up the person
23 that would be following the individual. Also, another way
24 they will try to spot us to just pull over on the shoulder to
25 see who goes by, and maybe recognize that car later on during

1 the day.

2 Also, another kind of surveillance technique they
3 would use would be after they leave their residence or place
4 of business, they would just drive around the neighborhood and
5 surrounding area just trying to locate anybody they would
6 think that would be watching.

7 Q So having multiple cars is helpful so it's difficult to
8 identify one person?

9 A Yes.

10 Q Why is it important not to get detected by the person
11 that you're surveilling?

12 A Well, if the individual is going to meet somebody,
13 conduct any business that they're going to conduct, they will
14 not do it if they realize they're being followed.

15 Q Generally, what's the purpose, overall purpose of
16 conducting surveillance of organized crime figures?

17 A Again, to document who they were meeting with. And also
18 to document places they go.

19 Q Would you select who you would follow in a given day?

20 A No. That would be assigned by the main office. A
21 different priorities that were given by the main office of New
22 York.

23 Q Did you ever conduct surveillance of an individual named
24 Ronald DeConza?

25 A Yes.

1 Q Did you conduct surveillance of him on a number of
2 occasions?

3 A Yes.

4 Q Were you conducting surveillance of him on January 29th,
5 1999?

6 A Yes.

7 Q Did you observe him that day?

8 A Yes.

9 Q What were your instructions for the surveillance of
10 DeConza that day?

11 A To document his activities for that day.

12 Q Would that include keeping track of who he met with?

13 A Yes.

14 Q Did you have a surveillance log for that day?

15 A Yes.

16 Q Do you have it with you?

17 A No, I do not.

18 MR. BURLINGAME: I'm giving the witness a copy of
19 3500 RB-1.

20 Q Do you recognize that?

21 A Yes.

22 Q What is it?

23 A It's a typed surveillance log of January 29th, 1999.

24 Q That's the day you were conducting surveillance of
25 DeConza?

1 A Yes.

2 MR. BURLINGAME: With the Court's permission, I'd
3 ask that the witness be allowed to refer to his surveillance
4 log to refresh his recollection as needed?

5 THE COURT: Granted.

6 BY MR. BURLINGAME:

7 Q Did DeConza meet with anyone that day?

8 A Yes, he did.

9 Q At the time, did you know who -- how many people did he
10 meet with?

11 A Two individuals.

12 Q At the time, did you know who those two people were?

13 A No. Not on this day, no.

14 Q Were you later able to identify each of the individuals?

15 A Yes.

16 Q Who were they?

17 A One is the defendant. And the other individual, I don't
18 recall who he was but he was identified.

19 Q When you say the defendant, who are you talking about?

20 A I'm sorry?

21 Q When you say the defendant who are you talking about?
22 Charles Carneglia?

23 A Carneglia, yes.

24 Q So if you could take us through what happened that day?

25 A We started surveillance at Mr. DeConza's residence. He

1 left his residence and proceeded to go - well, his residence
2 is in Holbrook, Long Island. He then drove to La Guardia
3 Airport where he picked up, at the time it was two unsub
4 males. We did not know who they were.

5 Q What is unsub?

6 A Unsub is just, basically, we don't know who the
7 individual is. Or we're not 100 percent sure who the
8 individual is. So instead of putting somebody that we may
9 think he is, we put down unsub and then later on we try to
10 identify the person.

11 From that point they drove to Pennsylvania to a
12 Cracker Barrel.

13 Q What time did the two individuals get picked up at the
14 airport?

15 A Approximately 10:00, 10:05.

16 Q Was one of these two individuals the person that you
17 later identified as Charles Carneglia?

18 A Yes.

19 Q You said they picked them up at La Guardia at 10:00. And
20 then what happened?

21 A They departed approximately 10:11 a.m., and arrived at
22 Cracker Barrel in Pennsylvania. Keller's Corner,
23 Pennsylvania, at 12:19 p.m.

24 Q A couple of hours later?

25 A Yes.

1 Q Were you able to take any video at the Cracker Barrel?

2 A Yes, video was taken.

3 Q What did the video show?

4 A The video shows Mr. DeConza and the two unsub males
5 exiting the Cracker Barrel and entering Mr. DeConza's vehicle,
6 which was a black Expedition.

7 Q Were you able to take any video earlier in the day?

8 A No, we were not.

9 Q You didn't take any video at La Guardia when DeConza
10 picked them up?

11 A No.

12 Q Why not?

13 A We were just not in a position to do that.

14 Q The video you took was of the three individuals exiting a
15 Cracker Barrel restaurant and getting back in DeConza's car?

16 A That's correct.

17 Q What did they do after they got back in DeConza's car?

18 A They left the Cracker Barrel and proceeded to go to the
19 Gap State Park Inn in Maryland.

20 Q What time did they leave the Cracker Barrel?

21 A They left the car Cracker Barrel at 1:09 p.m.

22 Q What time did they get to the Gap State Park Inn in
23 Maryland?

24 A At 3:50 p.m.

25 Q What happened when they got there?

1 A They exited the car and entered the Inn with luggage.

2 Q What did you do?

3 A After that point we called it a day and broke off the
4 surveillance.

5 Q Why did you call it a day when they went inside the Inn?

6 A Well, most likely they were going to stay there
7 overnight, and we had been following them most of the day. So
8 we thought it would be safe to leave them where they were.

9 Q Did you get any pictures or videos of them going into the
10 Inn?

11 A No.

12 Q Why not?

13 A We were most likely not in a position to do so.

14 Q Did you go back the next morning to follow them after
15 they came out of the Inn?

16 A No.

17 Q That wasn't your assignment the next day?

18 A That wasn't our assignment.

19 Q While you were following them, did DeConza take any steps
20 to avoid surveillance?

21 A Yes. Initially, when he left his residence, again, I
22 described, you know, driving around the block, driving through
23 the neighborhood looking for anybody that was sitting in a car
24 or just somebody he didn't recognize from the neighborhood.

25 Q Anything else?

1 A I believe --

2 Q You can refer back to your notes to refresh your
3 recollection if you need to.

4 A Yeah. Most likely he was driving slow and also driving
5 extremely fast. Mr. DeConza, I recall, drove extremely fast.
6 Almost at unsafe speed, and that was to try to see who was
7 following him or detect any of us.

8 Q You were familiar with how DeConza drove?

9 A Yes. He was a target that we were assigned on and off
10 for about a year.

11 Q So you followed him on a number of occasions?

12 A A number of occasions.

13 Q Was it fair to say that it was regular practice of his to
14 take steps to avoid detection?

15 A Yes.

16 Q Now, in preparing to testify, did you watch any video
17 that was taken that day?

18 A Yes.

19 Q I'm showing you what has been marked as Government
20 Exhibit 319. You can you take a look at that. What is that?

21 A That's the surveillance video for that day.

22 Q That's the surveillance video for that day. How do you
23 know it was the one that you watched?

24 A Because it's dated and I initialed it.

25 MR. BURLINGAME: I move to admit Government Exhibit

1 319?

2 THE COURT: Granted.

3 (So marked as Government Exhibit 319 in evidence.)

4 MR. BURLINGAME: Permission to publish?

5 THE COURT: Granted.

6 MR. BURLINGAME: Permission for the witness to come
7 down and explain who's in the video as we watch it.

8 THE COURT: Yes.

9 (Whereupon a video was played.)

10 BY MR. BURLINGAME:

11 Q The only video you were able to take that day was of them
12 coming out of the Cracker Barrel. Where was it, in
13 Pennsylvania, you said?

14 A Pennsylvania.

15 Q And getting into DeConza's car?

16 A Yes.

17 Q This is the Cracker Barrel that you followed them to from
18 La Guardia Airport?

19 A Yes. That's the car. That was the black Expedition.
20 That's the car that he drove.

21 Q That is the Cracker Barrel?

22 A The Cracker Barrel.

23 That's one of the individuals. There's Mr. DeConza
24 and Mr. Carneglia right here. He's coming.

25 Q That's DeConza in the brown leather jacket?

1 MR. BURLINGAME: We have a little glitch.

2 (Pause in the playing of the video.)

3 MR. BURLINGAME: I'm sorry, Judge. It should be
4 working. I'm sorry.

5 (Whereupon the video was played.)

6 BY MR. BURLINGAME:

7 Q Take it from the top.

8 A This is the Cracker Barrel. That's DeConza. And that's
9 one of the unsubs. And then the other unsub. And you saw him
10 briefly in the picture.

11 Q That's DeConza handing the telephone to the defendant?

12 A Yes.

13 Q That's the defendant with the blue jacket with the white
14 stripes?

15 A Yes.

16 Q Talking on the phone?

17 A That's correct.

18 Q How far away was this video being taken from?

19 A Somewhere in the mid parking lot area. I'm guessing 50
20 feet possibly.

21 Q That would be the vehicle?

22 A The vehicle.

23 Q The steering wheel in the foreground?

24 A That's correct.

25 Q Is it typical not to have audio on a video like this?

1 A Yes, no audio is taken.

2 Q Why is that?

3 A You wouldn't get audio being in the car. The audio was
4 muted out on the video recorder.

5 Q Are there devices like in the movies where you can just
6 point to the defendant and hear what they're saying?

7 A I'm sure there is, but when you don't know where the
8 person is going to be, it's hard to deploy those devices to do
9 that.

10 MR. BURLINGAME: No further questions.

11 MS. SHARKEY: No cross.

12 MR. BURLINGAME: Judge, as I informed you at the
13 last break, we lost one of our witness due to travel and one
14 of our witnesses to health. So we're without witnesses for
15 the day. We apologize for it.

16 THE COURT: Let's try to make Monday a full day,
17 please. 9:30 on Monday. The jury will be here then.

18 (Whereupon the jury leaves the courtroom at 3:30
19 p.m.)

20 (The witness is excused at 3:30 p.m.)

21 MR. FARBER: Judge, you previously asked for an
22 exhibit list. That is the defendant's exhibits as of today.

23 THE COURT: Mark it as Court Exhibit 5.

24 (So marked as Court Exhibit 5 in evidence.)

25 THE COURT: Any application or motions?

1 MS. SHARKEY: No, Judge.

2 MR. BURLINGAME: We still haven't received any
3 discovery from the defense. If they're going to present it in
4 their case, we'd just renew it at this time.

5 THE COURT: How much longer do you expect your case
6 to be?

7 MR. BURLINGAME: I think we have a full week next
8 week and the majority of the week after that.

9 THE COURT: Another two full weeks?

10 MR. BURLINGAME: That's what I believe.

11 THE COURT: Does the defendant have an idea what
12 they will require?

13 MS. SHARKEY: Not at this juncture. Certainly
14 nothing approaching the government's case. At the most a
15 week. Probably not a week.

16 THE COURT: So you have a full week next week and a
17 full week the following week, and a few days following that.
18 The defendant will just have a few days at most. We can
19 assume this case will probably be closing in three weeks.
20 Three week from today.

21 MR. BURLINGAME: That's correct. Judge, if the
22 defense is aware that they're going to have at least a few
23 days with the witnesses, we'd ask for the names of the
24 witnesses and any discovery for them at this point.

25 THE COURT: Yes. If you have any notion, give it to

1 them.

2 MS. SHARKEY: Yes, Your Honor.

3 THE COURT: All right. We will have three weeks
4 more for this.

5 THE CLERK: Yes, Your Honor.

6 THE COURT: All right. Thank you.

7 MS. SHARKEY: Thank you, Judge.

8 MR. FARBER: Thank you, Your Honor.

9 MR. BURLINGAME: Thank you, Judge.

10 Judge. I'm sorry. I realized, I think we'll
11 certainly have a full week next week and then we'll get into
12 the beginning of the week after that. But I think that's the
13 week we'll likely end. I tacked on an extra week.

14 MS. SHARKEY: A week and a half?

15 MR. BURLINGAME: I think next week and into the
16 following week, and we end sometime that week.

17 MS. SHARKEY: Great.

18 THE COURT: You'll be finished on March 5th.

19 MR. NORRIS: Sometime during the week of March 2nd
20 we anticipate concluding our case.

21 THE COURT: We should have a verdict one way or
22 another by the 19th of March.

23 (Whereupon the matter was adjourned to February 23,
24 2009, at 9:00 a.m.)

25

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